

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no. :** 1917 of 2022  
**First date of hearing:** 04.05.2022  
**Date of decision :** 20.08.2024

1. Mr. Abhishek Jaiswal
2. Mrs. Shruti Jaiswal

**Office:** 161/35, Kashi Raj Nagar,  
Katghar, Allahabad, Uttar Pradesh, 211003

**Complainants**

**Versus**

1. M/s BPTP Limited
2. M/s Countrywide Promoters Pvt. Ltd
3. M/S Business Park Maintenance Services  
Private Limited

**Regd. Office:** 28, ECE House, 1<sup>st</sup> Floor, K.G.  
Marg, New Delhi 110001

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Gaurav Rawat  
Sh. Harshit Batra

**Counsel for Complainants**  
**Counsel for Respondents**

**ORDER**

1. The present complaint dated 04.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules)

for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Heads	Description
1.	Name of the project	"Spacio', Sector 37D, Gurugram, Haryana
2.	Project area	43.588 acres
3.	DTCP license no.	83 of 2008 issued on 05.04.2008
	Validity of license	04.04.2025
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others
	Licensed area	23.814 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020
5.	Date of execution of flat buyer's agreement	28.03.2011 (on page no. 27 of complaint)
7	Date of Booking	09.08.2010

		(as per page no. 49 of reply)
8.	Unit no.	Q-706, 7 <sup>th</sup> floor, Tower-Q (page no. 35 of complaint)
9.	Unit area admeasuring	1000 sq. ft. (on page no. 35 of complaint)
10.	Revised unit area	1097 sq. ft. (a on page no. 172 of reply)
11.	Total consideration	Rs 45,14,328/- on page no. 172 of reply)
12.	Total amount paid by the complainant	Rs. 32,08,916/- ( page no. 172 of reply)
13.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement i.e. within a period of <b>36 months from the date of booking/registration of flat</b> and the promoter has claimed <b>grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate</b> in respect of the colony from the authority.	09.02.2014 <b>Note:</b> Grace period is allowed
14.	Occupation certificate date	15.01.2021

15.	Offer of possession	29.01.2021 ( page no. 170 of reply)
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**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- I. That the complainant is a law-abiding citizens and consumers who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainant being interested in the project because it was a housing project and the complainants had need an own home for their family.
  - II. That one-sided development agreement and inordinate delay in possession has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the Builder, whereby the builder imposes unfair and discriminatory terms and conditions. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which was forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory.
  - III. That the complainants approached to the respondent for booking of a flat admeasuring 1000 Sq. ft. in BPTP Spacio Sector- 37 D, Gurugram and

paid booking amount Rs. 250000/- through cheque/RTGS No. 572537 on dated 09.08.2010 and receipt dated 13.08.2010. The complainant were allotted the flat no. Q-706, 7<sup>th</sup> Floor, Tower-Q, measuring 1000 Sqft in Project "BPTP Spacio" Sector- 37 D, Gurugram, Haryana.

- IV. That the respondent to dupe the complainants Mr. Abhishek Jaiswal, Mr. Jawahar Lal Jaiswal and Mrs. Susheela Jaiswal in their nefarious net even executed buyer's agreement signed between complainants and M/S BPTP Limited & Countrywide Promoters Pvt. Ltd on dated 28.03.2011, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.
- V. That the total cost of the said flat is Rs. 3316000/- including BSP, EDC/IDC, CMC, Car Parking, ECC/PBIC/FFC) including Basic Development charges, Club, firefighting & power backup installation charge, IFMS, Car Parking, VAT as per builder buyer agreement clause 2 and out of that sum of Rs 38,08,916/- paid by the complainants in time bound manner.
- VI. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 3208916.51 before offer of possession which is more than 95% of total sale consideration and after that Rs. 600000/- paid to the respondent at the time of offer of possession. But respondent is not given the physical possession of the unit after the final payment demand letter on dated 03.03.2021 paid all amount final

payment after discount Rs. 600000/- including all which is illegal and arbitrary.

- VII. The respondent-1 is main promoter, unilaterally introduce respondent 3 as a maintenance agency without taking prior consent from allottees and respondent no. 3 was start extracting money from allottees in the head of advance maintenance, IFMS, Administrative charges and common electricity charges without giving physical possession. in case allottees are not paying this charges at the time of demand respondent-3 imposed interest charges @18% p.a either allottees liable to pay or not.
- VIII. That the advance maintenance, IFMS and administrative charges was demanded by the respondent -1 on the behalf of respodent-3 & same was paid by complainants an amount of Rs 1,16,305 on dated 20/09/2021. But builder was not given physical possession of flat after paying all dues this is illegal arbitrary and unilateral. After that respondent no-3 was started to send electricity bill without giving physical possession of property.
- IX. That respondent was liable to hand over the possession of a said unit before 12.02.2014 so far from completion as per buyer's agreement clause no 3.1 but builder offered the possession on dated 29.01.2021 but flat are not in habitable condition. As per construction status and absence of basic amenities respondents will take more time to give physical possession.
- X. That the builder in last 10 years, many time made false promises for possession of flat and current status of project still desolated and raw not



even 70% work is completed builder breach the trust and agreement. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled her responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein are not in breach of any of its terms of the agreement.

- XI. That complainant has paid all the instalments timely and deposited Rs. 38,08,916/- .The respondents in an endeavor to extract money from allottees devised a payment plan under which respondent linked more than 15 % amount of total paid against as a an advance 80 % amount linked with the construction of super structure only ) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development rest 5 % lined with offer of possession already paid to the builder but not given the physical possession the unit till date.
- XII. That respondent executed FBA is one sided at the time of offer of possession builder used new trick for extracting extra money from complainant and forcibly imposed escalation cost of Rs 6,34,452/- And wrongly justified it. It is understood when respondent booked the flat in 2010 and which was to be delivered by 2013 (as per agreement it was to be delivered after 36 months from date of booking) and therefore it is understood inflation was calculated at the time of booking. if project is

delayed by the respondent, complainant is not responsible. When we see inflation index of past 18 year during this period rate of inflation is decreased so builder is liable to give discount in basic sale price rather than forcibly imposing escalation cost with unjustified reason. Basic sale price which was fixed at the time of booking so demand of escalation cost is totally illegal, arbitrary, unjustified and unacceptable.

- XIII. That respondents have to charged interest on in delayed instalment @ 18 % P.A. interest as per clause 2.11 of BBA and offer the delay penalty for himself is just Rs 5/ month as per clause no 3.3 is totally illegal arbitrary and unilateral.
- XIV. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and her family has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant are eminently justified in seeking possession of flat along with delayed penalty.
- XV. That the respondent at the time of offer of possession forcibly imposed escalation cost Rs. 6,34,452 /- electrification & stp charges Rs. 86,320/- club membership charges Rs. 1,00,000/- (without construction of club) and increased the super area of flat 1000 Sq. Ft to 1079 Sq Ft. But Carpet area remains same. Due to increase in super area payable amount was increased and it was created extra burden on complainant which has



been objected by the complainant at the time of offer of possession. It is unjustified and illegal.

- XVI. That respondent demanded 1 year advance maintenance charges, as per the Haryana Apartment Owners Act and the charges are to be paid monthly hence asking for the maintenance charges in advance for 12 months, without having given the possession and without the Registration of the flat is absolutely illegal. The respondent charges IFMS (Interest free maintenance security), this is security deposit and builder will get interest on amount paid but it is not passed to the complainant is illegal, arbitrary and unilateral.
- XVII. That the respondent approached to the complainant for negotiation in final demand of dispute in offer of possession and one complainant (Abhisekh Jaiswal ) was went to the respondent's office for enquire unilateral demand which was raised by builder at the time of offer of possession builder was given him penny discount and executed the final discount letter dated 03/03/2021 and again extract the amount of Rs 600000/- . this unilateral arbitrary and illegal which was not accepted by other complaints even not signed. Even complainant's have not received physical possession of property.
- XVIII. That the complainants Mr. Abhishek Jaiswal, Mr. Jawahar Lal Jaiswal and Mrs. Susheela Jaiswal approached to the respondent for Name substitution and name deletion request according our request the respondent accept the request and change the name accordingly and

finally unit transfer to Mr. Abhishek Jaiswal S/O Mr. Jawahar Lal Jaiswal and Mrs. Shruti Jaiswal W/O Mr. Abhishek Jaiswal.

- XIX. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, and trick of extract more and more money from complainant pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent her entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.
- XX. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered in dark as the planning with which the complainant invested her hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fare ruts.
- XXI. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 37 D Gurugram which is within the jurisdiction of this Hon'ble Authority.

**C. Relief sought by the complainants:**

4. The complainant has sought following relief(s).
- I. **Direct the respondent to pay delay interest on paid amount of Rs 3808916.51/- from 12-02-2014 along with pendent lite and future interest till actual physical possession of the unit thereon @ 18 %.**
  - II. **Direct the respondent-3 to return the amount of Rs. 116305/- paid to Business Park Maintenance services private limited (respondent 3) without giving physical possession.**
  - III. **Direct the respondent to quash the advance electricity bill, electrification & STP charges Rs. 86,320/-, one year maintenance charges and club membership charges of Rs. 1,00,000/-.**
  - IV. **Direct the respondent to quash the increased in super area of flat as carpet area remain same as previous.**
  - V. **Direct the respondents to quash the VAT Charges and will pay by own and to direct the respondent to pay interest on maintenance security.**
  - VI. **Pass an order for payment of GST amount levied upon the Complainant and taken the benefit of input credit by builder.**
  - VII. **Direct the respondents to not charge any holding charges.**
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondents have contested the complaint on the following grounds.
- a. That the Respondents had diligently applied for Registration of the Project in question i.e. "Spacio" located at Sector-37D, Gurugram before Hon'ble Haryana Real Estate Regulatory Authority and accordingly, Registration Certificate dated 13.10.2017 was issued by this Hon'ble

Authority bearing registration number 300 of 2017 and subsequently the Respondents completed the construction of the project and received Occupancy certificate from the department therefore the complaint filed by the complainants lacks a cause of action and is not maintainable before the Hon'ble Authority.

- b. It is submitted that occupation certificate for has been granted by The Director Town and Country Planning, Haryana, Chandigarh vide its MEMO No. ZP-437-Vol-II/JD(AS)/2020/13344 dated 30.07.2020 and vide its MEMO No. ZP-437-Vol-III/(AD)(RA)2020/890 dated 15.01.2021 respectively.
- c. That agreements that were executed prior to implementation of RERA Act, 2016 and Rules made thereunder shall be binding on the parties and cannot be reopened. Thus, both the parties being a signatory to a duly documented floor buyer agreement (hereinafter referred to as the "FBA") dated 28.03.2011 executed by the complainants out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.
- d. It is submitted that the charges qua VAT/GST or any fresh incidence of tax were duly agreed by the complainants vide clause 4 of the booking application, wherein the complainants agreed to pay VAT, service tax and all other charges as may be communicated from time to time. Vide said clause the complainants further agreed to pay any tax/charges including any fresh incidence of tax as may be levied by the Government of Haryana/Competent Authority/Central Government, even if it is

retrospective in effect as and when demanded by the respondents on the super area of the flat without any demur and protest.

- e. Without prejudice to the above, it is submitted that the demand qua VAT has been duly paid by the Complainants without any protest and demur and accordingly the receipt for the same was also issued by the Respondents. It is further submitted that the said charges has been agreed by the Complainants right from the beginning and despite being agreed charges, the Complainants is now at such belated stage is raising contentions against the said charges with a view to gain at the expenses of the Respondents.
- f. It is further submitted that the cost escalation charges if any can be ascertained and finalized at the time of Offer of possession. Thus, the said charges were already agreed upon by the Complainants at the stage of entering into the transaction. It is further important to point out at this juncture that the undertaking to pay the above mentioned charges was comprehensively set out in the FBA
- g. Maintenance charges are being taken in advance to ensure the proper maintenance of the complex. It is further submitted that the parties had duly agreed regarding maintenance charges and IFMS at the stage of entering into the transaction vide Clause 8 of the Application Form, which understanding was reiterated vide Clause 7.4 of the duly executed FBA.
- h. That the Complaint filed by the Complainants is also liable to be dismissed and the matter is required to be referred to an Arbitrator as



agreed between the respondents and complainants vide Clause-33 of the Flat Buyers Agreement (FBA) dated 28.03.2011. In this regard, it is further submitted that the relationship between the complainants and the respondents are guided by the terms of the duly executed flat buyer's agreement, signed by the complainants willingly and voluntarily which contains arbitration clause and in view of the amendment in Arbitration and Conciliation Act 1996 and more particularly, amendments made in Section-8 therein, the present disputes/ claims are liable to be referred to Arbitration in terms of the above mentioned arbitration clause.

i. That the complaint filed by the complainants is also liable to be dismissed as the complainants have concealed material facts from this Hon'ble Authority. In this context, reference may be made to the following:

- It is submitted that all representations were made to the complainants in terms of the application for allotment and the terms and conditions contained. The complainants only after having understood the same, the complainants accepted the terms and conditions and proceeded for booking on his own volition and in favor of the respondents with respect to waiver of claims for delay compensation charges.
- The complainants have also concealed in its complaint that the respondents offered additional benefits in the form of Timely Payment Discount ("TPD") to the customers including the complainants, thereby reducing the cost of the flat. The total amount of TPD provided to the Complainants is Rs.66,015.51/-

- That the issues raised are false, baseless and vague, the complainants were well aware at the time of booking of the unit in question that the broad terms and conditions stated in the said application were only indicative in nature and the intent of the terms of booking is to broadly acquaint the applicants with the terms and conditions, which are comprehensively set out in the flat buyer's agreement. It is submitted that the said issue has been raised for the first time by the complainants in the complaint under with malafide intentions. It is further submitted that after reading the agreement thoroughly, the complainants affixed their signatures on each and every page of the agreement without raising any objection or concern regarding any other clause of the agreement. The complainants are not only estopped by his conduct but also by the principles of limitation from raising such issues at this stage.
  - It has been suppressed by the complainants that the respondents regularly issued construction updates to the complainants. That the bona fides of the complainants are established from the fact that the respondents from time to time has been updating its customers including the complainants with respect to the progress being made in the project, same is evident from emails wherein, the respondents explicitly elaborated to the complainants about the works that are already complete with recent snaps.
- j. That it is submitted that the complainants have falsely alleged that the respondents had made false promises in completing the project and

handing over the possession. It is submitted that the respondents company has invested more funds in the project as a whole than collected from the customers. In this context it is submitted that the construction is going on in full swing and the respondents have made every endeavor to hand over possession at the earliest and the offer of possession was sent on 29.01.2021. It is further submitted as follows:

- The complainants and the respondents had, vide Clause-10 of the FBA, duly agreed that subject to force majeure and compliance by the complainants of all the terms and conditions of the FBA, the respondents proposes to hand over possession of the flat to the complainants within 36 months from the date of booking/registration of flat along with a further grace period of 180 days.
- That vide clause 3.3. of the flat buyer's agreement it was further duly agreed upon between the parties that subject to the conditions mentioned therein, in case the respondents fail to hand over possession within the stipulated period, the respondents shall be liable to pay to the complainants compensation calculated @ Rs. 5/- per sq. ft. of the super area for every month of delay, the adjustment whereof shall be done only at the stage of execution of conveyance deed.
- That vide Clause 10 of the FBA, the parties had further agreed that if the Respondents fails to complete the construction of the flat due

to force majeure circumstances or circumstances beyond the control of the respondents, then the respondents shall be entitled to reasonable extension of time for completion of construction.

- That the complainants mutually agreed with the respondents in respect of the terms and conditions of the flat buyer's agreement and had never raised any issue with regard to any terms contained therein. It is submitted that the respondents have been diligently working upon the project "Spacio" and every endeavor is being made to complete the project at the earliest.
- k. That the complaint is further liable to be dismissed in as much as the complainants have indulged in raising various grave and defamatory allegations against the respondents which require detailed investigation and cannot be decided in summary proceedings.
- l. That the complaint filed by the complainants are also not maintainable for the fact that all the alleged claims of the complainants are not covered under the agreed terms and conditions of the contract mutually agreed and reduced into writing between the complainants and the respondents.
- m. That the complaint under reply is also liable to be dismissed on the ground that the complainants does not have any cause of action against the respondents in the present complaint and is making baseless allegations and references only to prejudice the Authority, thus the present complaint ought to be dismissed for want of cause of action.

n. That the complainants have filed the present complaint, which is highly exaggerated, untenable and only to take wrongful advantage of the benevolent provisions of the Real Estate Regulatory Authority Act. It is a well settled law that highly exaggerated, whimsical and fanciful claims cannot be entertained and the same ought to be dismissed on this ground itself.

**G Findings on the relief sought by the complainant.**

7. The respondent states that the allottees have amicably settled the matter and had already offered a special discount of Rs. 3,41,670/- already offered to the complainants at the time of offer of possession. On the contrary, the complainants state that the said letter was entered upon under duress and cannot be treated as settlement agreement. Furthermore, the subject of the said letter is "Discount Letter" not "Settlement Letter". After consideration of all the facts and circumstances, the authority is of view that possession was offered to complainants on 29.01.2021 alongwith a demand of outstanding dues against which respondent had provided them discount of Rs. 3,41,670/- vide discount letter dated 03.03.2021 which has been refereed as settlement by respondent although it is not settlement of dispute. The respondent implies that the discount offered by it is a substitute for the statutory right of delayed possession charge enumerated in section 18 of the Act. After examination of all the documents it is concluded that the said contention is not valid as the delayed possession charge is a statutory right provided under the sec-18 of the Act and the discount provided being in nature of damages for breach of contract, it cannot be equated with delayed possession charge. Delayed possession charge is a separate remedy that supersedes and is not a substitute for any other form of compensation



or relief for breach of contract. So, discount letter cannot be treated as settlement agreement w.r.t. delay possession charges and the complainants are hereby entitled for delay possession charge under section 18 of the Act of 2016.

8. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges are involved in all these cases and others pending against the respondents in this project as well as in other projects developed by them, so, vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee and a report was submitted and the same along with annexures was uploaded on the website of the authority.

#### **G.1 Delay possession charges.**

9. In the present complaint, the allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

*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."*

10. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**"3. Possession**

*3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable 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 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 handover the possession of the Flat to the Purchaser(s) within a period of **36 months from the date of booking/registration of Flat**. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of **180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority....."***

*(Emphasis supplied)*

11. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
12. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials

etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

13. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking/registration of the flat. The booking of the flat was made on 09.08.2010 as per receipt on page no. 27 of complaint. Therefore, the due date of handing over possession comes out to be 09.08.2013. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP.
14. The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. 433 of 2022 titled as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

*As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above*

*said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate*

15. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus the due date of handing over of possession comes out to be 09.02.2014.
16. **Admissibility of delay possession charges at prescribed rate of interest:**  
The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. However, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- 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.*
17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.



18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(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—*

*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.*

*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;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of booking/registration of flat. For the reasons quoted above, the due date of possession is to be calculated from the



date of of booking/registration of flat i.e., 09.02.2014. Therefore, the due date of possession is calculated from the date of booking/registration of flat and the said time period of 36 months expired on 09.02.2014. As far as grace period is concerned, the same is allowed for the reasons quoted above. So, the due date of possession comes out to be 09.02.2014.

22. The respondent has obtained the occupation certificate on 15.01.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 28.03.2021 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.03.2011 to hand over the possession within the stipulated period.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 15.01.2021. The respondent offered the possession of the unit in question to the complainants only on 29.01.2021. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay

possession charges shall be payable from the due date of possession i.e. 09.02.2014 (calculated from the date of sanctioning of building plan) till the date of offer of possession (29.01.2021) plus two months i.e., 29.03.2021. The complainants are further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 09.02.2014 till the date of offer of possession (29.01.2021) plus two months i.e., 29.03.2021; as per provisions of section 18(1) of the Act read with rule 15 of the Rules

#### **G.II Increase in super area**

25. It is contended that the respondents have increased the super area of the subject unit vide letter of offer of possession dated 29.01.2021 without giving any formal intimation to, or by taking any written consent from the allottee. The said fact has not been denied by the respondents in reply. The authority observes that the said increase in the area has been as per clause 5 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

***"5. ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE***

*The seller/confirming party is in the process of developing residential blocks in the SPACIO in accordance with the approved layout plan for the Colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the construction of the units or as may be required by any statutory authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent..."*

26. On perusal of record, the super area of the unit was 1000 sq. ft. as per the flat buyer's agreement and it was increased by 97 sq. ft. vide letter of offer of possession, resulting in total super area of 1097 sq. ft. The said committee in this regard has made following recommendations while submitting report:

"The above site report was discussed in the meeting of the Committee held on 08.09.2021 and after detailed deliberation, the Committee makes the following recommendations:

- (i). *The inclusion of area under pool balancing tank as common area is not justified. Hence, the area under pool balancing tank, measuring 432.48 sq.ft. (Park Generation) and 684.28 sq. ft. (Spacio) may be excluded from the category of common areas.*
- (ii). *The area under feature wall elevation measuring 12054 sq. ft. (Park Generation) and 6665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.*
- (iii). *Consequent upon exclusion of the above mentioned components from the list of the common areas, the additional common areas will decrease from 45713.29 sq.ft. to 38363.97 sq. ft (Park Spacio) and from 26300 sq.ft. to 13813.48 sq. ft. (Park Generation). **Accordingly, saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio) and from 1.2829 to 1.2613 (731573/580001.38, Park Generation). In the instant cases, the super area of the apartment measuring 1865 sq. ft. will reduce to 1851.50 sq.ft. (1434.7 x 1.2905) in park spacio and the super area of the apartment measuring 1521 sq.ft. will reduce to 1496.70 sq. ft. (1186.06x1.2613) in park Generation. Accordingly, the respondent company be directed to pass on this benefits to the remaining complainants/allottees.***
  - i. *The area under the remaining components of the common area mentioned in the Annexure-6(park generation) and Annexure-7 (park spacio) may be allowed to be included in the super area in terms of the enabling clause 2.4 of the agreements."*

27. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.30 to 1.2905. In the instant case, the super area of the unit measuring 1097 sq.ft. will reduce to 1088 sq.ft. Accordingly, the super area of the unit be revised and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

### **G.III Cost escalation**

28. The complainants have pleaded that the respondents also imposed escalation cost Rs. 6,34,452/- after an increase in super area from 1000 to 1097 sq. Ft. without increasing the carpet area. The respondents in this regard took a plea that cost escalation was duly agreed by the complainant at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above-mentioned charges was comprehensively set out in the FBA. In this context following clause of the FBA is noteworthy:

*"12.11 The Purchaser(s) understands and agrees that the basic sale price is escalation free except a situation where the cost of steel, cement and other construction materials increase beyond 10%. It is further agreed and understood that the steel price of Rs. 27,500/- per ton and prices of other construction material has been taken as per index price as on 01.09.2009. the company is fully authorised to revise the cost of construction materials, based on market conditions. The revision, if any, shall be intimated to the purchaser(s) at the time of possession. the purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever."*

29. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. Ft. No objections to the report have been raised by either of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, builder buyer agreement and the issues raised by the promoters to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq.ft. to the allottees of the project. The relevant recommendation of the committee is reproduced below:

***Conclusion:***

*In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer."*



30. The authority concurs with the recommendations of the committee and holds that the escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

#### **G.IV. VAT charges**

31. It is contended on behalf of complainant that the respondents raised an illegal and unjustified demand towards VAT to the tune of Rs. 24,977/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.
32. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottees as well as the promoter, observed that the developer is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme. The same is concluded in the table given below:

<b>Period</b>	<b>Scheme</b>	<b>Effective Rate of Tax</b>	<b>Whether recoverable from Customer</b>
<b>Up to 31.03.2014</b>	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
<b>From 01.04.2014 to 30.06.2017</b>	Normal Scheme	4.51%	Yes



33. The authority concurs with the recommendations of the committee and holds that promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme

#### **G.V Advance maintenance charges**

34. The issue with respect to the advance maintenance charges was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

*"D. Annual Maintenance Charges: After deliberation, it was agreed upon that the respondent will recover maintenance charges quarterly, instead of annually."*

35. The authority is of the view that the respondents are right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

#### **G.VI GST**

36. The allottees have also challenged the authority of the respondent's builders to raised demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised a demand of Rs.1,65,304/- under the head GST which is illegal and is not liable to repeat to be paid by them.
37. Though the version of respondents is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the

affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) [A]	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate(C =A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profitteering benefit passed if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
<b>Amount to be refund Only if greater than (E- F) (G)</b>	<b>0.36%</b>	<b>0.53%</b>	<b>2.99%</b>	<b>0.41%</b>	<b>2.99%</b>	<b>2.99%</b>

38. The due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondents/promoters were not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority

concur with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter.

**G.VII STP charges, electrification, firefighting and power backup charges**

39. I was contended by the complainants, on 29.01.2021, the respondent issued an offer of possession letter to the complainants along with various unjust and unreasonable demands under various heads i.e. cost escalation of Rs.6,34,452/-, electrification and STP charges of Rs.86,320/-. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.
40. The said issue was also referred to the committee and it was observed as under by the committee:

***Recommendations:***

- i. The Committee examined the contents of the FBAs executed with the allottees of Spacio and Park Generation and found that various charges to be paid by the allottees find mention at clause 2.1 (a to h). Neither, the electrification charges figures anywhere in this clause, nor it has been defined anywhere else in the FBAs. Rather, ECC+FCC+PBIC charges have been mentioned at clause 2.1 (j), which are to be paid at INR 100 per sq. ft.*
- ii. The term electric connection charges (ECC) has been defined at clause 1.16 (Spacio) and Clause 1.19 (Park Generation), which is reproduced below:*

*"ECC" or electricity connection charge shall mean the charges for the installation of the electricity meter, arranging electricity connection (s) from Dakshin Haryana Bijli Vidyut Nigam, Haryana and other related charges and expenses."*
- iii. From the definition of ECC, it is clear that electrification charges are comprised in the electric connection charges and the same have been clubbed with FCC+PBIC and are to be charged @INR 100 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges to the allottees of Spacio in an arbitrary manner and in violation of terms and conditions of the agreement. Accordingly, the Committee recommends:*
  - A. The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted and only STP charges be demanded from the allottees of Spacio@ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.*

*B. The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-Invoice shall be amended to that extent accordingly."*

41. The authority concurs with the recommendation made by the committee and holds that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

#### **H.VIII Club membership charges**

42. It was contended by the complainants that the respondent has charged a sum of Rs. 1,00,000/- of club membership charge in its letter for offer of possession despite the fact that the construction of the club has not been completed till date. Further, in plethora of judgements of various RERA Authorities; it has been held that the club membership charges cannot be imposed on the allottees till the time the club is not completed and becomes functional. On the other hand, respondent denied that the construction of club has not finished. The respondent has been raising demands as per its whims and fancies.
43. The said issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

*"...After deliberation, it was agreed upon that club membership will be optional.*



*Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00. In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso."*

44. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

#### **G.IX Holding charges**

45. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

#### **G.X Admin Charges**

46. The respondents have raised demand on account of "Admin Charges" amounting to Rs. 1,16,305/-. With respect to the administrative charges. The authority after hearing the arguments and submissions made by the parties is of the view that charges which are defined in the agreement are payable by the allottee and any charge which is not part of the agreement will not and shall not be charged/payable by the allottee. It has also been observed by the authority time and again that a lot of charges under the head of various names are being demanded from the allottee which are arbitrary and unjustified. In number of judgements by various courts, it has pointed that the terms of the agreement have been drafted mischievously and are ex-facie



one sided as also held in para 181 of Neelkamal Realtors Suburban Pvt. Ltd. (supra), wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

47. The Hon'ble Supreme Court in the matter of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan (supra)** held that a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The same was also reaffirmed by the Hon'ble Supreme Court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna &Ors. (supra)**. Therefore, the charges so claimed under the agreement should be reasonable and agreeable by the allottee. Further, the charges should not be exorbitant and should be charged on average basis as per the normal practice in this regard.
48. With respect to the contention of the allottee regarding demand of administrative, the authority has already decided this issue in complaint bearing no. CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it has been held as under:

*"214. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter - developer for any such expenses*

*which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged."*

*(Emphasis supplied)*

49. In view of the above, the authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for facilitating the registration of the property as has been fixed by the DTP office in this regard

**F. Directions of the authority**

50. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. **Delay Possession Charge:** The respondent is directed to pay interest at the prescribed rate of 11 % p.a. for every month of delay from the due date of possession i.e., 09.02.2014 till offer of possession i.e., 29.01.2021 till plus two months i.e., 29.03.2021 to the complainant(s) as per section 19(10) of the Act.
- II. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules after deduction of amount already deducted to adjusted in statements of account towards discount/compensation by the respondent.
- III. The respondents shall not charge anything from the complainants which is not part of the builder buyer's agreement save and except in the manner as provided in this order.

- IV. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.30 to 1.2905. In the instant case, the super area of the unit measuring 1097 sq.ft. will reduce to 1088 sq.ft. Accordingly, the super area of the unit be revised and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.
- V. **Cost escalation:** The authority hereby directs that escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- VI. **VAT Charges:** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.
- VII. **GST Charges:** The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 37 of this order.
- VIII. **Advance maintenance charges:** The authority hereby directs that the respondents are right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly

instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

**IX. STP charges, electrification, firefighting and power backup charges:**

The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

**X. Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

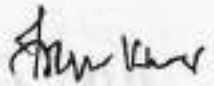
**XI. Administrative charges:** The authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for facilitating the registration of the property as has been fixed by the DTP office in this regard.

**XII. Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being

part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020

51. Complaint stands disposed of.
52. File be consigned to registry.

  
Ashok Sangwan  
Member

  
Arun Kumar  
Chairman

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.08.2024

HARERA  
GURUGRAM