HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**3160 of 2022**
Date of filing.:	**13.12.2022**
First date of hearing.:	**25.04.2023**
Date of decision.:	**14.01.2025**

Neeta Bhatnagar W/o Sh. Naresh Kumar Bhatnagar,
R/o, House no. 1976, Sector-8,
Faridabad, Haryana-121006
Also at: Ebony A2102, Salarpuria Greenage, Hosur Road, Near Oxford College, Bengaluru, Karnataka- 560068

....COMPLAINANT

VERSUS

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

2. M/s BPTP Parklands Pride Limited
   (Earlier know M/s New Age Town Planners Ltd.)
   Through its Managing Director Having its registered office at: M-11, Middle Circle, Connaught Circus, New Delhi 110001

....RESPONDENT(S)

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

Present: - Sh. Arjun Kundra, Learned Counsel for the complainants through VC

Sh. Tejeshwar Singh, proxy counsel for respondents through VC

ORDER:

1. Present complaint has been filed on 13.12.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Faridabad.
2.	Nature of the project.	Residential

3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-114-FF , 1st floor, admeasuring 1510 Sq. Ft.
5.	Date of nomination in favor of complainant	16.05.2013
6.	Date of floor buyer agreement with complainant	16.09.2013
7.	Due date of possession	16.09.2015
8.	Possession clause in FBA (Clause 5.1)	**Clause 5.1** *Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of the floor buyer agreement or sanction of building*

		plan whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).
9.	Total/Basic sale consideration	₹27,79,101.72/-
10.	Amount paid by complainant	₹26,99,076.83/-
11.	Offer of possession.	19.12.2023
12.	Date of occupation certificate	02.03.2023

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

3. That Mr. Vikrant Sood, Mrs. Sunita Sood and Mr. Nishant Sood were original allottee of the unit in question and subsequently the present complainant become an allottee vide nomination letter dated 16.05.2013. With said nomination letter, respondent had substituted the name of present complainant along with record of receiving an amount of ₹ 17,59,150/ in respect to the unit in question.

4. A Floor Buyer Agreement (FBA) was executed between the present complainant and respondents on 16.09.2013. As per terms of the agreement possession of the unit was to be delivered latest by 16.09.2015. However, respondents has not made any offer of possession till date. That, the basic sale price of the unit was fixed at ₹27,79,101.72/- out of which complainant had already paid an amount of ₹ 26,99,076.83/- from year 2013-2017. Copies of payment receipts and statement of account dated 14.04.2017 issued by respondents are annexed as Annexure C-2 and C-5.

5. That the complainant had made all the payments on time and it is respondents who have miserably delayed the construction and development of the project. Infact, respondents have time and again extended the probable date for the completion of the project, thus misleading the complainant. The complainant on the other hand had already made almost the payment of the entire sale consideration and

therefore was left with no other option than to place reliance on the words of the respondents. Further, it is stated that the floor buyer agreement executed between parties has arbitrariness and unfairness which could clearly be derived from clause 7.1 to 7.3 which provides respondent to have right to terminate the agreement and forfeit the earnest money in case delay in payment of installments occurred and had right to accept the delayed installment with interest @ 18% p.a compounded. After paying an amount of ₹ 17,59,150/-, complainant having no option had executed further documents in name of affidavit cum undertaking dated 04.09.2013 which were also illegal in nature. Nonetheless, the possession of the residential floor has been due since September 2015, however till date the same has not been delivered. Further, from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyer agreement. However, the respondents have miserably failed to complete the project even after a lapse of more than nine years from due date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainant.

6. That the complainant is aggrieved by the conduct of the respondents and inordinate delay in the completion and development of the project and have therefore approached this Authority. Hence, the present complaint.

C. RELIEF SOUGHT

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

   i. Direct the respondents to deliver immediate possession of the floor of the complainants i.e. PE-114-FF, BPTP Park Elite Floors, Parklands, Faridabad, Haryana admeasuring 1,510 sq ft. after due completion and receipt of occupancy & completion certificate(s) along with all the promised amenities and facilities and to the satisfaction of the complainant; and

   ii. Direct the respondents to pay prescribed rate of interest as per the RERA Act, 2016 on the amount already paid by the complainants from the promised date of delivery i.e. 16.09.2015 till the actual physical and legal delivery of possession; and

   iii. Pass an order restraining the respondents from charging any amount from the complainant which do not form part of the Floor Buyer's Agreement dated 16.09.2013 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT

charges, club membership charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant and further to set aside & quash one sided, unilateral, illegal, unfair, arbitrary contracts/ undertakings/agreements/ affidavits, etc;

iv. May pass any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 02.08.2023 pleading therein:

8. That present complaint pertains to an independent floor bearing no. PE-114-FF, on first floor tentatively admeasuring 1418 sq. ft super area, in the real estate Project "Park Elite Floors" being developed by the respondents.

9. That unit was originally booked by Mr. Vikrant Sood through a booking form dated 25.05.2009 after which, unit in question was endorsed in name of present complainant i.e. Ms. Neeta Bhatnagar on 16.05.2013. Thereafter, present complainant and respondent executed floor buyer agreement on 16.09.2013 for unit bearing no. PE-114-FF, admeasuring 1510 sq. ft. in the project known under the name and style of "Park Elite Floors" (hereinafter referred to as the "Project"). As per the Clause 5.1 of

the agreement, the due date of possession was 16.03.2016 i.e. 24 months from date of execution of Floor Buyer Agreement along with grace period of 180 days.

10. 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 respondents 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 pendemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. Otherwise, construction of the project

was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.

11. Further, respondents have challenged the maintainability of the present complainant on the ground that builder buyer agreement with complainants was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

E. REJOINDER FILED BY COMPLAINANT ON 29.01.2024 RAISING ADDITIONAL ISSUES

12. That respondent after receipt of occupation certificate dated 02.03.2023 had issued an offer of possession dated 19.12.2023. It is the submission of complainant that said offer of possession is illegal because it is not accompanied with delay interest on account of delay caused in offering the possession and is accompanied with illegal demands. Further, as per the floor buyer agreement dated 16.09.2013, the area allotted to the complainant was tentatively 1510 sq ft. The alleged offer of Possession dated 19.12.2023 mentions the super built up area of the present unit/floor was 140.28 sq. mtr., or 1510 sq ft. on plot measuring 232.44 sq.

mtrs. However, in the alleged Occupation Certificate dated 02.03.2023, the area of the unit is only 109.756 sq. mtr or 1181.4 sq ft. on plot measuring 232.750 sq. mtrs. This clearly proves the alleged Occupation Certificate & offer of possession & statement of receivables & payables are illegal & against the settled principles of the RERA Act and need to applied/issued/revised afresh.

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

i. No provision for the compensation & delay interest, etc., to the complainant reflected in the final statement of account given along with offer of possession. The complainant is entitled to prescribed rate of interest as per the Act for the period of delay.

ii. Unilateral and illegal enhancement in total sale price of the unit-from Rs. 30,03,748.32/- as per the statement of account dated 14.04.2017 (Pg. no. 77 of the complaint) to Rs. 35,92,611.06/-.

iii. Cost escalation- The reasons for the cost escalation- Rs. 1,60,180.80/- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.

iv. Club Charges- The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The respondents cannot collect charges for the services which are non-existent till date.

v. That there is no occupation certificate and completion certificate attached. That further the alleged OC dated 02.03.2023 is for a smaller area of the floor/Unit.

vi. Illegal undertaking/indemnity attached with the alleged offer of possession.

vii. GST has been wrongly imposed on the complainant.

viii. That the complainant has already paid Rs. 26,99,076.83/- to the respondents till date (Pg. no 77of the complaint)i.e. more than 90% of total sale consideration. That respondent threatened complainant to levies holding charges and maintenance charges in case she does not budge from her position.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENTS

14. Ld. counsel for complainant reiterated his submissions and pressed upon for relief of possession of booked unit alongwith delay interest. He further stated that respondent be directed to charge only for the area against which the occupation certificate has been granted by the competent authority, i.e., 1181.4 sq ft. He referred to his rejoinder wherein he has raised objection to the offer of possession dated 19.12.2023 and requested to direct respondent not to charge illegal demands/taxes from complainant at the time of offer of physical possession of the floor.

15. Ld. counsel for respondents argued that complainant nowhere in its pleadings as well as in relief sought has mentioned anything related to difference of area for which occupation certificate has been provided. He stated that relief beyond pleadings/relief sought cannot be awarded to complainant. In support, he read all the issues to be decided alongwith relief sought at the time of hearing. With respect of difference in area of unit allotted in agreement/mentioned in offer of possession and mentioned in occupation certificate, he stated that final super area of the unit stands as 1510 sq. ft.. Complainants herein attempts to compare the FAR and the super area which cannot be practically done as the super area is inclusive of the FAR, area of balcony/veranda, proportionate common areas, while the occupation certificate has been attained for FAR only. Further, he referred to clause 1.10 of agreement for the definition of 'covered area and clause 1.33 for definition of 'super area'. He further averred that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout

State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016. Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

16. Learned counsel for respondent submitted that the provision with regard to occupation certificate are enshrined in Clause 4.10 of Chapter IV and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he submitted that perual of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code,2017, in accordance with several provisions. So, claim of complainant is misguided and erroneous. Furthermore, he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainant willfully, without consent accepted each and every terms of agreement. Now, at this stage she cannot preclude herself from abiding by the terms of agreement. The intent and purpose for which agreement was executed has to be given effect in case complainant does not want to

come out of said agreement. He stated that the complainant has wrongly challenged the payment of dues with respect to the GST,VAT, delayed payment interest, club membership, cost escalation, holding charges and maintenance charges. Payments in regard to the same were mutually and voluntarily agreed between the complainant in different clauses of agreement. In support, he referred to para 11, 14 and 15 of judgement dated 19.11.2010 passed by Hon'ble Supreme Court in Civil Appeal No. 550,551,1611 of 2003 titled as **DLF Universal Limited and Anr. Vs Director, Town and Country Planning Haryana and other**.

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondents are that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act.

Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no.

6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of floor buyer agreement is admitted by the respondent. Said agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

G.II Objection regarding deemed date of possession.

Admittedly floor buyer agreement was executed between the parties on 16.09.2013 and as per clause 5.1 of it, possession was supposed to be delivered within 24 months from date of execution of floor buyer

agreement or sanction of building plans alongwith grace period of 180 days for applying for occupation Certificate. None of the parties in their pleadings have mentioned the date of sanction of building plan. So, taking 24 months from date of agreement, the deemed date of possession work out to 16.09.2015. Respondent is its reply has taken a plea that grace period of 180 days be allowed as respondent had received occupation certificate on 02.03.2023. In this regard, Authority is of view that respondent was duty bound to complete the construction within 24 months of execution of agreement, i.e., by 16.09.2015 then time period of 180 days was provided for applying for occupation certificate. Here, in the present case, respondent did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which would have started running from 16.09.2015 got extended by another 7 years, as occupation certificate was received by respondent on 02.03.2023. Delay more than 7 years to complete the construction work and to receive occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondent to grant 180 days grace period is rejected.

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

Respondent failed in its contractual obligation to deliver possession of the unit within the time period stipulated in the floor buyer agreement i.e., 24 months from the date of execution of floor buyer agreement. There is an delay on the part of the respondent and respondent has attributed the same to the various reasons such as the NGT order banning construction activity, Covid outbreak etc. However, the same are not convincing enough to the Authority as the due date of possession was in the year 2015 whereas NGT order referred by the respondents pertains to year 2016. Hence, the respondents cannot be allowed to take advantage of the delay on his part by referring to directions issued by statutory bodies.

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 (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

> "69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project.*

The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

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

Since, in the present case also the deemed date of possession had lapsed in the year 2015, respondent cannot be allowed taking advantage of an subsequent event of Covid-19 that further delayed the construction. Therefore, 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.

G.IV Objection raised by the complainant in respect of difference in area provided in offer of possession dated 19.12.2023 and occupation certificate dated 02.03.2023

Complainant's submissions is that the respondent is in receipt of occupation certificate which is for area 1181.4 sq ft. whereas area of the unit as mentioned in floor buyer agreement is 1510 sq. ft. Therefore,

complainant had prayed that respondent be directed to charge only for the area approved in occupation certificate, i.e. 1181.4 sq. ft.

To this, it is the argument of respondent that neither in pleadings nor in relief sought, there is any mention of such plea so any relief beyond pleadings cannot be awarded to complainants. Further, ld. counsel for respondent submitted that grant of occupation certificate is a technical process being followed in consonance with provisions of Haryana Building Code and does not cover all area like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also. In respect of objection of respondent that relief beyond leadings cannot be awarded to complainant, it is observed by the Authority that complainant herein is seeking valid offer of possession alongwith delay interest. The term 'valid offer of possession' duly incorporates all legal demands only which respondent can justifiable claim from complainant. Demand of payment as per approved area is a part of legal demands which can be raised by respondent. So, in essence demand for area whether approved or increased is a part of valid offer of possession. Hence, objection of respondent is rejected being devoid of merit.

Further, regarding issue of difference in area as provided in floor buyer agreement dated 16.09.2013 i.e. 1510 sq.ft or 140.430 sq.mtrs and alleged offer of possession dated 19.12.2023, i.e. 1510 sq. ft or 140.28 sq.mtrs and occupation certificate dated 02.03.2023, i.e. 1181.4 sq.ft or 109.756

sq.mtrs, Authority observes that respondent is entitled to charge only for the area of the unit which is actually provided to allotee at the time of handing over of possession after issuance of occupation certificate issued by the competent Authority. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the allotee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code,2017, which clearly establish that lift, mumty, balcony, parking , services and storages shall not be counted towards FAR. Also any area over and above sanctioned/approved FAR is not a saleable area of project. However, cost of construction of all such structures which are not included in FAR can be burdened upon total cost of the unit; nevertheless cannot be charged independently making it a chargeable component of unit. Hence, the plea of respondent deserves to be rejected and respondent is directed to re-calculate the price of area of unit, base of the unit area provided in occupation certificate i.e. 109.756 sq. mtrs or 1181.4 sq.ft.

17. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. PE-114-FF, admeasuring 1510 sq. ft (now area of unit as discussed in aforesaid paragraph is 1181.4 sq. ft) had been allotted to allotee in the project of the respondent namely "Park Elite Floors" situated in Parklands, Faridabad, Haryana vide floor buyer agreement

dated 16.09.2013 executed between complainant and respondent, possession of the unit should have been delivered by 16.09.2015.

18. Authority further observes that respondent was obligated to offer possession of the unit by 16.09.2015, however it is a matter of fact that respondent had miserably failed to fulfill its obligation to deliver the possession of the unit within stipulated time. Now, after a lapse of 7 years, respondent has offered possession of unit on 19.12.2023(i.e. after filing of present complaint), alongwith additional demands which are challenged by complainant by way of filing rejoinder. Details of such objections raised by complainant are incorporated in para 12-13 of this order. In this regard, it is observed that the complainant had had paid more than 90% of the basic sale price from year 2013-2017 itself. Since the delay caused is attributed to the respondent, it cannot burden the complainant with the charges/taxes etc. which were not applicable at the time of deemed date of possession, which in present case was 16.09.2015 or were not part of the flat buyer agreement. Further, objection to each illegal demand raised by complainants is dealt with at length in following manner:-

a. Firstly, with regard to the **decrease in area from 1510 sq. ft to 1181.4 sq. ft.; since final area approved in occupation certificate is 1181.4 sq. ft**, Authority is of the view that respondent has received occupancy certificate for the unit in question which is for an area measuring

1181.4 sq. ft. As discussed in aforesaid paragraph no. F.IV, the respondent shall charge from complainant only for the final area 1181.4 sq. ft as provided under occupation certificate.

b. Secondly, with regard to the **cost escalation charges of Rs 1,60,180.80/-**, it is observes by the Authority that deemed date of possession in captioned complaint was 16.09.2015, whereas respondents issued a letter offering possession on 19.12.2023(during pendency of the complaint), i.e. after an inordinate delay of 7 years. Additionally, the offer was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which in view of this Authority is unjust as the same has been due to respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay is solely attributed to the respondents, as there is nothing on record to justify the delay from the date of execution of FBA till deemed date of possession. Thus, it shall be unfair to pass the burden of escalated costs on to the complainant. The complainant, having already endure 7-year delay, should not be penalized with cost escalation charges for no fault on her part. Courts have consistently ruled that developers cannot impose additional financial burdens on homebuyers for delays caused by the developers themselves.

Therefore, demand raised by the respondents on account of cost escalation charges are hereby set aside.

c. Thirdly, with regard to the demand raised by the respondent on account of **club charges be waived off**, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational. In this case, it is essential to note that the **Occupancy Certificate (OC)** for the unit has been obtained by the respondent on 02.03.2023. However, no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainant has explicitly stated at the time of arguments that the proposed club has not come into existence, with only a temporary club operational, if at all. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it in future as and when proper club will become operational at site.

d. Fourthly, with regard to the demand raised by the respondent on account of **GST,** Authority is of the view that deemed date of possession in this case works out to 16.09.2015 and charges/taxes

applicable on said date are payable by complainant. Fact herein is that GST came into force on 01.07.2017, i.e. prior to deemed date of possession. No doubt the complainant as per clause 9.1 read with clause 1.32 of the floor buyer agreement has agreed to pay all the Government taxes, rates etc, but this liability shall be confined only up to the due date of possession. The delay in delivery of possession is the default on part of respondent/promoter and possession was offered on 19.12.2023 by that time GST had become applicable. However, it is a settled law that a person cannot take benefit of his own wrong/default. Therefore, the respondent is not entitled to charge GST from complainant/allottee as liability of GST has not become due up to the due date of possession as per the agreement.

e. Lastly, Counsel for respondents have also stated that payment amounting to ₹ 78,075/- as timely payment discount were credited into complainant account by respondents as a good will gesture for making timely payments to respondents. He stated that said amount be deducted from the total paid amounts mentioned in account of complainant as said amount was never actually paid by complainant. In this regard, Authority deems appropriate to not allow deduction of above mentioned amount from the paid amounts of complainant for two fold reasons. Firstly, complainant is not interested in withdrawing from the project and is willing to continue and wait till project gets

completed, meaning thereby, complainant is sticking to their decision and showing their willingness to have the booked unit for which they had already paid more than the basic sale price to the respondent in the year 2013-2017 itself. Secondly, it is obvious that respondents had credited those amounts in complainant account for making payments on or before time. Since, complainant has performed her part and is taking the unit for which she had paid in advance to respondents for which certain benefits were credited by respondents to complainant account. Now, respondents cannot be allowed to take that amount back since complainant had completed their part of the agreement, however respondents have miserably failed to abide by terms of agreement.

19. Now, issue which remains to be adjudicated is delay interest. Respondents have offered possession of unit on 19.12.2023 after receipt of occupation certificate dated 02.03.2023. Said offer of possession was issued after delay of more than 7 years from deemed date of possession, i.e., 16.09.2015. Complainant herein are interested in having possession of their unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has made offer of

possession to the complainants on 19.12.2023 after obtaining occupation certificate. Hence, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession, i.e., 16.09.2015 up to the date on which offer of possession was sent to them after receipt of occupation certificate, i.e., 19.12.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

20. 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".

21. 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;

22. 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".

23. 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., 14.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.

24. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.1% (9.10% + 2.00%) from the due date of possession i.e. 16.09.2015 to date of valid offer of possession, i.e. 19.12.2023. till the date of a valid offer of possession.

25. Authority has got calculated the interest on total paid amount from due date of possession i.e. 16.09.2015 till the date of valid offer of possession i.e. 19.12.2023 which works out to **₹ 24,20,050/-** as per detail given in the table below:

Complainant claim to have paid an amount of Rs 26,99,076.83/- at page no. 32 of complaint. In support receipts of Rs 26,99,076.83/- has been annexed in complaint file as Annexure C-2 and C-5 from page no. 35; 78-90 of complaint book. However statement of account dated 14.04.2017 annexed at page no. 77 of complaint, shows that amount of ₹ 26,99,670.41/- stands received by respondents. Accordingly, an amount of Rs 26,99,076.83/- is taken from receipts annexed in complaint file and

remaining/differential amount of Rs 593.58/- is taken from statement of account dated 14.04.2017.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession i.e. 16.09.2015 or date of payment whichever is later	Interest Accrued till 19.12.2023 (in ₹)
1.	23,68,498.66/-	16.09.2015	21,73,094/-
2.	24,488/-	15.11.2016	19,295/-
3.	3,06,090.17/-	14.04.2017	2,27,220/-
4.	593.58/-	14.04.2017	441/-
Total:	**26,99,670.41/-**		**₹ 24,20,050/-**

H. DIRECTIONS OF THE AUTHORITY

26. 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 offer physical possession to complainant within 30 days and complainant is also directed to accept the same within next 30 days.

II. Respondent is directed to issue fresh statement of account in accordance with directions issued in para 18 of this order.

III. Respondent is directed to pay upfront delay interest as calculated in para 25 of this order to the complainant

towards delay already caused in handing over the possession within 90 days from the date of uploading of the order. Further, respondents shall be liable to pay delay interest to complainant as per Section 2(za) of RERA Act,2016.

IV. Respondent is directed to get conveyance deed of unit of the complainant executed within 90 days of actual handover of possession of flat. In case, any amount is due on account of stamp charges, then respondent shall inform the same alongwith letter of actual handing over of possession.

V. Complainant will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them.

VI. The rate of interest is chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.1% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

VII. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

27. **Disposed of**. Files be consigned to record room after uploading on the website of the Authority.

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]