HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1628 of 2023**
Date of filing:	**11.08.2023**
First date of hearing:	**12.09.2023**
Date of decision:	**16.12.2024**

1. Ms. Renu Mathur,
   W/o Dinesh Behari Mathur,
   R/o A-3/27, FF, Janakpuri,
   New Delhi-110058

2. Mr. Dinesh Behari Mathur
   S/o Sh. J.B. Lal,
   R/o A-3/27, FF, Janakpuri,
   New Delhi-110058

....COMPLAINANT(S)

VERSUS

1. M/s Countrywide Promoters Pvt. Ltd.
   Registered office- OT-14,
   3rd Floor, Next Door Parklands,
   Sector-76, Faridabad, 121004

2. M/s BPTP Limited
   Registered office- 28, ECE House,
   1st Floor, Kasturba Gandhi Marg,
   New Delhi- 110001

....RESPONDENTS

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

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

Sh. Hemant Saini, Counsel for both the respondents.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 11.08.2023 by the complainants 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 complainants, 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 81, Parklands, Sector-81, Faridabad
2.	Nature of the project.	Independent residential floors
3.	RERA Registered/not registered	Registered under registration no. HRERA-PKL-FBD-240-2021 dated 26.08.2021
4.	Details of allotted unit.	Unit No.- OM-12-05, ground floor, measuring 1478 sq.ft. via Allotment letter dated 20.06.2011
5.	Date of agreement-	07.07.2011
6.	Deemed date of possession	07.07.2014 (36 months from the date of execution of agreement)
7.	Basic sale price	₹34,02,907/-
8.	Amount paid by the complainants	₹35,85,237/-
9.	Occupation certificate received on	20.07.2022
10.	Offer of possession	Not given
11.	Payment plan	Construction linked plan

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

3. Facts of the complaint is that the complainants are an allottees of an independent residential floor in the respondents' project, "PARK-81," situated in Parklands, Faridabad, Haryana, specifically in Sector-81, Faridabad. As per the terms of the Floor Buyer's Agreement, possession of the said unit was to be handed over by July 7, 2014. However, the respondents have failed to complete the project and deliver the possession within the promised timeframe. The delay, now spanning nearly nine years, has caused immense inconvenience and financial loss to the complainants. Aggrieved by this, the complainants have filed the present complaint, seeking directions from this Hon'ble Authority for immediate delivery of the unit along with interest and compensation for the delay under the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) and its associated rules. The complainants also asserts that the matter falls within the territorial and pecuniary jurisdiction of this Hon'ble Authority, as the project is located within the specified territorial limits in Faridabad. Respondents 1 and 2 are companies duly incorporated under the Companies Act, 2013. Respondent No. 1 is a sister concern of Respondent No. 2. Hereinafter, both respondents are jointly referred to as the "Respondents."

4. In 2009-10, the respondents launched a group housing project named "PARK-81 PARKLANDS" in Faridabad, which was extensively marketed through various channels, including advertisements and broker networks.

5. Key highlights of the project, as advertised on the respondents' website, included:

   i. Mid-income housing with independent floors.
   ii. Multiple size options in 2, 3, and 4-bedroom categories.
   iii. Low-density living with ground-plus-two floor structures.
   iv. Proximity to residential projects, schools, hospitals, and essential infrastructure.

6. Attracted by these promises, the complainants applied for allotment of a residential floor and paid the booking amount. Shortly thereafter, the respondents began raising repeated demands for payments. A copy of the application form for allotment dated September 20, 2009, is annexed as **Annexure C-1**.

7. Despite paying the initial booking amount, the complainants did not receive an allotment immediately. Instead, the respondents continued to raise further demands for payments.

8. By June 2011, the respondents had collected approximately ₹7,00,000/- from the complainants. Subsequently, an allotment letter dated June 20, 2011, was issued, a copy of which is annexed as **Annexure C-2**. The respondents further collected over ₹13,00,000/- from the complainants before executing the Floor Buyer's Agreement. The complainants were allotted Unit No. OM-12-05-GF, located on the ground floor, admeasuring 1,478 sq. ft., at a basic sale price of ₹34,02,907 (post-discount).

9. Over a year after the allotment, the respondents provided a draft of the Floor Buyer's Agreement. The terms were entirely unilateral and arbitrary, leaving no room for negotiation. The complainants raised concerns regarding the unfair terms but, having already paid a substantial amount, were compelled to sign the agreement under duress. The respondents explicitly warned the complainants that any refusal to sign the agreement could lead to forfeiture of the paid amount. Consequently, the complainants signed the Floor Buyer's Agreement dated July 7, 2011, a copy of which is annexed as **Annexure C-3**.

10. The agreement included unfair clauses (e.g., Clauses 7.1, 7.3, and 5.5) which were heavily skewed in favor of the respondents. For instance: The respondents could terminate the agreement and forfeit the earnest money in case of payment delays, with interest at 18% p.a. on delayed installments.

However, in case of project delays, the complainants would receive compensation at an abysmal rate of ₹5 per sq. ft. per month.

11. As per Clause 5.1 of the agreement, possession was to be handed over within 36 months of execution, with a grace period of six months for obtaining necessary approvals. By this timeline, possession was due by July 7, 2014. Despite the complainants fulfilling all payment obligations on time, the respondents have failed to deliver the possession. To date, the complainants have paid ₹35,93,255.87 (as evidenced by payment receipts and the statement of account annexed as **Annexure C-4**).

12. On June 8, 2023, the respondents issued an "offer of possession" letter (annexed as **Annexure C-5**). However, this offer is flawed as the construction is incomplete, and critical certifications (such as Occupancy and Completion Certificates) have not been obtained. The offer also lacks any provision for compensation or delay interest. Vide the said offer of possession, respondents had unilaterally increased the total sale price of the unit, including illegal demands on account of club charges, GST and unilateral increase in super area of the unit from 1478 sq. ft. to 1536 sq. ft.

C. RELIEFS SOUGHT

13. That the complainants seek following relief and directions to the respondents:-

i. To direct the Respondents to deliver Immediate Possession of the floor of the complainants i.e. OM-12-05-GF, BPTP PARK - 81 Parklands, Faridabad, Haryana admeasuring 1,478 sq ft after due completion and receipt of OC & CC along with all the promised amenities and facilities and to the satisfaction of the complainants; and

ii. Direct the respondents to pay prescribed rate of interest as per the Rera Act, on the amount already paid by the complainants from the promised date of delivery i.e. 07th July 2014 till the actual physical & legal delivery of possession; and to also execute sale/ conveyance deed;

iii. Pass an order restraining the respondents from charging any amount from the Complainants which do not form part of the Floor Buyer's Agreement dated 07th July 2011 and/or is illegal and arbitrary including but not limited to illegal cost escalation charges of Rs. 1,52,524.80/-, unilateral illegal increase in Total

sale price - is Rs. 37,96,006.52/- as per Statement of Account dated 06.06.2023, 22.11.2016 & FBA dated 07th July 2011 and now illegally enhanced to Rs. 44,78,360.23/-, unilateral illegal increase in Basic Sale of the unit is Rs. 34,02,906.90/- as per Statement of Account dated 06.06.2023 & FBA dated 07th July 2011 and now illegally enhanced to Rs. 35,47,906.83/-, unilateral increase in area of the unit from 1,478 sq ft to 1,536 sq ft, delay penalty charges, illegal interest payable, GST charges, VAT charges, Club membership charges, illegal maintenance charges, levy of holding charges, enhanced charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainants;

iv. And to further quash/set aside the alleged illegal offer of possession dated 08.06.2023 and subsequent letters/demands & other unfair one-sided documents/ agreements sent/got executed by the respondents illegally and to issue fresh offer of possession after due completion and receipt of all the certificates (OC & CC) and all other permissions, along with all

the promised amenities and facilities as promised and charged for and to the full satisfaction of the complainants;

v. Further issue a fresh statement of accounts as per the law & as per the sections/rules of the Rera Act;

vi. And to further quash/set aside the alleged requirement/demand of Undertakings/Indemnity illegally sought from the complainants by the Respondents at the time of taking possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

14. The respondents presented a detailed reply on 29.03.2024, contesting the complainants' claims on several grounds, which are as under:

i. That the present complaint is not maintainable on the ground that that the Real Estate (Regulation and Development) Act, 2016, does not apply to the FBA, as it was executed prior to the Act's implementation. The agreement is valid and binding under the Haryana RERA Rules, which protect pre-existing agreements.

ii. That Respondent No. 1, Countrywide Promoters Pvt. Ltd., should be deleted from the array of parties as it is merely the confirming party to the Floor Buyer's Agreement (FBA) executed between the parties. Since

no relief has been sought from Respondent No. 1, it is neither a necessary nor a proper party to the case.

iii. That the complainants approached Respondent No. 2 expressing interest in booking an independent floor in the project "Park-81 Parklands," located in Sector 75-80, Faridabad, Haryana.

iv. That on 20.09.2009, the complainants applied for booking in the project and requested allotment of a residential unit. Consequently, Unit No. OM12-05-GF, admeasuring 1478 sq. ft., was allotted to them via an allotment letter dated 20.06.2011. Copies of the booking form and allotment letter are annexed as Annexures R1 and R2.

v. That a Floor Buyer's Agreement (FBA) dated 07.07.2011 was voluntarily executed between the complainants and the respondents, binding both parties to its terms and conditions. A copy of the agreement is annexed as Annexure R3.

vi. That demands were raised as per the agreed payment plan, and various discounts were offered by the company. Copies of payment requests, receipts, and reminders are annexed as Annexure R4 (Colly).

vii. That both parties were obligated to fulfill their respective obligations under the FBA. The due date for possession as per clauses 5.1 and 5.7 of

the agreement, was 36 months from the later of either the building plan sanction date or the agreement execution date, with an additional 180-day grace period for obtaining the occupancy certificate.

viii. That clause 14 of the FBA entitles the seller/confirming party to a grace period of 180 days for obtaining the occupancy certificate. This has been upheld in the case *Emaar MGF Land Ltd. vs. Laddi Praramjit Singh* (Appeal No. 122 of 2022).

ix. That the building plans were applied for on 20.01.2014 but remain unapproved due to circumstances beyond the respondents' control. Therefore, the due date for possession has not yet passed, rendering the complaint premature and liable for dismissal.

x. That the delay was due to genuine force majeure circumstances, including regulatory restrictions, environmental rulings, and the Covid-19 pandemic. These circumstances delayed construction but fall under the force majeure clause in the FBA.

xi. That the respondents incurred additional costs during the delays but continued construction without shifting the financial burden to customers. The Occupation Certificate was obtained on 20.07.2022, and

the possession offer was made on 08.06.2023. Copies of the certificate and possession offer are annexed as Annexure R5 and R6, respectively.

xii. That a settlement agreement dated 27.06.2023, awarding the complainants a special compensation of ₹5,00,000/-, resolved all disputes between the parties. The complainants agreed to withdraw all litigations and complaints unconditionally. A copy of the settlement is annexed as Annexure R7.

xiii. That the complainants have no claims of coercion or unfair means regarding the settlement, and any attempts to revive grievances violate the terms of the settlement.

xiv. That the complainants have failed to clear pending dues for electricity and maintenance charges, despite reminders dated 11.07.2023 and 10.08.2023 (Annexure R8).

xv. That the complaint is also barred under the principle of "approbate and reprobate." The complainants cannot simultaneously accept and contest the settlement terms.

15. Furthermore, the complainants had filed an application dated 20.06.2024, requesting the Authority to grant relief on account of various concerns, including a unilateral increase in super area, basic sale price, and total sale

price of the unit; cost escalation charges; club charges; GST charges; and other related issues. Additionally, the respondent has submitted an application dated 04.11.2024, providing a justification for the increased area mentioned in the offer of possession and disputing the complainant's challenge regarding the payment of dues related to GST, VAT, delayed payment interest, club membership charges, etc. The Authority has duly evaluated both applications to ensure a proper and balanced adjudication of the case.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANTS AND RESPONDENT

16. Ld. counsel for the complainants reiterated the basic facts of the case and submitted that the present complaint is akin to Complaint No. 2405 of 2022, which was decided by this Hon'ble Authority on 26.09.2024. He drew the Authority's attention to page 104 of the complaint, wherein the statement of account-cum-invoice is attached, clearly indicating that the respondents have increased the super area of the unit from 1478 sq. ft. to 1536 sq. ft. Additionally, the respondents have imposed cost escalation charges, GST, club membership charges, VAT, and service tax on the complainants. With respect to the settlement agreement mentioned by the respondents, the complainants argued that the agreement was never validly executed, as only one of the allottees sign it whereas it bears no signatures of the other allottee.

Referring to page 6 of the rejoinder, the counsel emphasized that complainant No. 2 was coerced by the respondents into signing an illegal full and final settlement agreement on 27.06.2023, offering only a nominal compensation for the delay, which was subsequently rejected by the complainants. He further referred to page 147 of the complaint, which contains an email dated 29.06.2023 confirming the complainants' non-acceptance of the settlement terms. The counsel also pointed out that the settlement agreement does not bear the signature of complainant Ms. Renu Mathur. He argued that any contract or settlement agreement requires the consent and signature of all the allottees to be legally valid. Since Ms. Renu Mathur was a signatory to the original agreement executed between the parties, her signatures were essential for any subsequent settlement to hold legal sanctity. In light of the above, the learned counsel requested the Hon'ble Authority to decide the case on its merits.

17. On the other hand, ld. counsel or respondents submitted that the occupancy certificate for the unit in question was obtained by the respondents on 20.07.2022, and subsequently, an offer of possession was made to the complainants on 08.06.2023. He referred to page 137 of the reply, which contains a copy of the full and final settlement agreement signed on

27.06.2023, according to which, the complainants are barred from filing the present complaint. The counsel further referred to pages 139 and 140 of the reply, where reminder notices dated 11.07.2023 and 10.08.2023 for payment of outstanding balance have been annexed. He asserted that, as per Clause 5.1 of the original agreement, the respondents were obligated to hand over possession within 36 months of execution, with an additional grace period of six months for obtaining necessary approvals. The building plans were submitted for approval on 20.01.2014, but approval is yet to be granted. In support of this, the counsel of respondents cited judgments in *Emaar MGF Land Ltd. vs. Laddi Paramjit Singh*, Appeal No. 122 of 2022, and *Neetu Soni vs. Imperia Wishfield Pvt. Ltd.* (decided on 01.02.2019), Complaint No. 1076 of 2018, RERA Gurugram, Haryana. He also referred to page 138 and page 39 of the reply, arguing that the signature of allottee Dinesh Behari is consistent across documents, negating the complainant's allegations of coercion.

18. After hearing the submissions of both parties, the Authority inquired from the respondents about the steps taken to comply with the terms of the settlement agreement. In response, the respondents stated that the terms could not be forcibly enforced on the complainants, as the complainants themselves failed

to adhere to the settlement terms. The respondents further noted that the complainants did not take possession of the unit despite repeated offers.

F. ISSUES FOR ADJUDICATION

19. Whether the complainants are entitled to get possession of booked flat along with delay interest in terms of Section 18 of RERA, Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondents.

G.I- Objection regarding impleadment of respondent no. 2 as party to complaint.

Respondent no. 2 in its written reply has stated that present complaint pertains to an independent floor bearing no. OM-12-05-GF admeasuring 1478 sq. ft super area in the real estate Project "Park 81 Parklands" being developed by the Respondent No.2. The Respondent No. 1 is a mere confirming party to the Agreement. Neither the Respondent No. 1 is a necessary party nor a proper party to the present case and no relief has been claimed from the Respondent No. 1 and hence, its name should be deleted from the array of parties. Perusal of file reveals that complainants have paid all amount/carried out transaction with respondent no. 2 only. No relief in specific has been claimed against respondent no. 1. Hence, no direction is passed in this order against respondent no. 1.

G.II. Objection with regard to the maintainablity of the complaint on the ground that the Real Estate (Regulation and Development) Act, 2016, does not apply to the FBA, as it was executed prior to the Act's implementation. The agreement is valid and binding under the Haryana RERA Rules, which protect pre-existing agreements.

One of the averments of respondents is 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, 2016. 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 floor-buyer agreements. After RERA Act, 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 dated 07.07.2011 is admitted by the respondents. Said floor buyer agreement was binding upon both the parties. As such, the respondents are under an obligation to hand over possession on the deemed date of possession and in case, the respondents failed to offer possession on the deemed date of possession, the complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

G.III That the full and final settlement has already been executed between the parties via an agreement dated 27.06.2023. Thus, all the claims and grievances stands settled between the parties.

Upon careful examination of the document annexed by the respondents as Annexure R-8 on page no. 139 of the reply, titled "Full and Final Settlement" executed on 27.06.2023, the Authority observed that the agreement has been signed by the complainant, Dinesh Behari Mathur, on the said date. The Authority then observed the original floor buyer agreement, executed on 07.07.2011, between the respondent, BPTP Ltd., and the complainants, Renu Mathur and Dinesh Behari Mathur. This agreement clearly indicates that both complainants were parties to the contract, and thus, both were required to sign any subsequent legal documents or amendments relating to the contract.

The discrepancy in the present case arises because, while the full and final settlement agreement dated 27.06.2023 bears the signature of only one

complainant, Dinesh Behari Mathur, it does not include the signature of the other complainant, Renu Mathur. Since the original floor buyer agreement was executed by both complainants, it follows that any modification, settlement, or final agreement relating to the original contract would necessitate the consent and signature of both parties involved in the original agreement.

Without the signature of Renu Mathur, the settlement agreement cannot be deemed legally binding or valid, as both complainants were parties to the original agreement. A legal settlement agreement, particularly one aimed at resolving disputes arising from a contract involving multiple parties, requires the mutual consent of all parties involved. Therefore, the signature of only one complainant, in this case, Dinesh Behari Mathur, does not fulfill the necessary legal requirements to render the settlement agreement enforceable.

To ensure that the settlement agreement holds legal sanctity, it is imperative that both complainants, Renu Mathur and Dinesh Behari Mathur, provide their signatures, indicating their mutual consent to the terms of the agreement. Without signatures of both the allottees, the agreement cannot be considered legally valid or enforceable. Moreover, the full and final settlement is dated

27.06.2023 and immediately on 29.06.2023 through email Renu Mathur registered her objections to the said settlement.

G.IV Objection regarding deemed date of possession.

Admittedly floor buyer agreement was executed between the parties on 07.07.2011 and as per clause 5.1 of it, possession was supposed to be delivered within 36 months from date of sanction of building plan or execution of the floor buyer agreement whichever is later alongwith grace period of 180 days for applying and obtaining the occupation certificate from the competent authority. The respondents, in their reply and during arguments, asserted that the building plans for the project were applied for approval on 20.01.2014 but the same have not been approved till date. So without having any exact date of approval of sanctioning of building plans, the Authority deems it appropriate to rely on the execution date of the Floor Buyer Agreement to calculate the deemed date of possession. The Floor Buyer Agreement was executed on 07.07.2011, and as per the stipulated timeline in Clause 5.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of **07.07.2014**. Further, Respondents in its written statement have taken a plea that grace period of 180 days be allowed as respondents had received occupation certificate on

20.07.2022. In this regard, Authority is of view that respondents were duty bound to complete the construction within 36 months of execution of agreement, i.e., by 07.07.2014 then time period of 180 days was provided for applying for occupation certificate. Here in this case, respondents did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which could have been started from 07.07.2014 got extended by another 8-9 years, as occupation certificate was received by respondents on 20.07.2022. Time period of 8 years taken by respondents to complete the construction work and receipt of occupation certificate is not a reasonable duration. There is no justification on record that how this time period is actually incurred for completing the unit in question. Respondents herein are claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondents to grant 180 days grace period is rejected.

G.V. Objection raised by the respondents regarding force majeure conditions.

The due date of possession in the present case works out to 07.07.2014. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondents could not carry out the construction activities in the project can

be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on the part of the respondents and the various reasons given by the respondents such as the National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they take consent from the State Pollution Control Board, no objection from the concerned authorities and have the environment clearance from the competent Authority. Secondly, Environmental pollution (Prevention and Control Authority) had directed the closure of all brick, kilns, stones crushers, hot mix plants etc with effect from 07.11.2017 till further notice. Thirdly, EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019 and the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in its writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. There is delay on the part of the respondents and the various reasons given by the respondents such as the NGT order, directions of Environmental Pollution (Prevention and Control) Authority, (EPCA) orders and Hon'ble Supreme Court of India order

dated 04.11.2019 and Covid outbreak etc. are not convincing enough for two fold reasons, firstly, as respondents had claimed that NGT orders passed in year 2016 has been one of the cause for delay in construction activity of the project. Any event/circumstance that has happened later in time to the deemed date of possession is of no meaning/hindrance upon construction work of project. It is pertinent to mention here that respondents herein are in business of real estate sector and is well aware of the fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondents considering all such factors. Secondly, respondents themselves had promised to deliver possession of unit to complainants so any delay if has occurred during completion of apartment, the respondents cannot burden it upon complainants. Complainants are not at fault for trusting respondents by depositing the consideration amount to respondents in return of delivery of possession of unit. Therefore, now, the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore***

Services Inc. vs Vedanta Ltd &Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:

> "69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*
>
> *The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.* "

Moreover, the respondents have not provided the stage wise construction status of unit in question with relevant photographs on record to support the fact that respondents have fulfilled its obligations and it is complainants who are shying away from their duties/obligations. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

G.VI Objection raised by the complainants in respect of difference in area provided in offer of possession dated 08.06.2023 and occupation certificate dated 20.07.2022.

Complainant's submissions is that the respondents are in receipt of occupation certificate dated 20.07.2022 which is for an area of 1251.62 sq ft. whereas area of the unit as provided in offer of possession dated 08.06.2023 is 1536 sq. ft. So, it has been requested that respondents be directed to charge only for the area approved in occupation certificate, i.e. 1251.62 sq ft. To this, it is the argument of respondents that the final super area of the unit stands as 1536 sq. ft. The complainants are comparing the FAR and the Super area, which cannot be practically done as the super area is inclusive of the FAR +area of verandah, mumty, shaft, projection/ sunshed while the OC has been attained for FAR only. Further, it is submitted by the ld. counsel for respondents that vide clause 1.31 of the Floor Buyer agreement dated 07.07.2011, super area was mutually agreed between the parties. It is observed by the Authority that complainants herein are seeking valid offer of possession alongwith delay interest. The term 'valid offer of possession' duly incorporates all legal demands only which respondents can justifiable claim from complainants. Demand of approved area is a part of legal demands which can be raised by respondents. So, in essence demand for area whether approved or increased is a part of valid offer of possession. Hence, objection of respondents is rejected being devoid of merit. Further, in respect of issue of difference in area as

provided in offer of possession dated 08.06.2023, i.e. 1536 sq. ft and occupation certificate dated 20.07.2022, i.e. 1251.62 sq. ft., Authority observes that respondents are entitled to charge only for the area of the unit which is actually to be provided to allotee at the time of handing over of possession. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the 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. Any area beyond 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 by the respondents but; cannot be charged independently making it a chargeable component of unit. Hence, the plea of respondents deserves to be rejected and respondent is directed to re-calculate the price of area of unit, i.e. 1251.62 sq. ft. A fresh offer of possession must be provided to the complainants accordingly.

In conclusion, the Authority deems it appropriate to declare the offer of possession dated 08.06.2023 null and void. It is noted that the complainants challenged the offer of possession by filing the present complaint on

11.08.2023, indicating that the complainants did not accept the said offer. Since the offer of possession was not made in accordance with the approved OC, the offer dated 08.06.2023 holds no legal significance.

20. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. OM-12-05-GF, admeasuring 1478 sq. ft (now area of unit as discussed in aforesaid paragraph is 1251.62 sq. ft) had been allotted to complainants in the project of the respondent namely "Park 81 Parklands" situated in Parklands, Faridabad, Haryana vide allotment letter dated 20.06.2011. As per floor buyer agreement dated 07.07.2011 executed between complainants and respondents, possession of the unit should have been delivered by 07.07.2014.

21. Authority further observes that possession of the unit should have been delivered by 07.07.2014 but it is an admitted fact that respondents had miserably failed to fulfill his obligation to deliver the possession of the unit within stipulated time. Now, respondents are in receipt of occupation certificate on 20.07.2022 but valid offer of possession as per terms of the agreement has not been made thereafter to the complainants till date.

22. Further, ld. counsel for complainants objected to demand of Rs 1,52,524.80/- raised on account of cost escalation, Rs 50,000/- for club membership

charges, Rs 80,940/- for GST, increase in Basic sale price and total sale price due to increase in size and maintenance charges, Illegal undertaking/indemnity attached with the alleged offer of possession, levy of service tax, VAT and GST is illegal etc.

23. Objection to each illegal demand raised by complainants is dealt with at length in following manner:-

i. Firstly, with regard to the **increase in area from 1478 sq. ft to 1536 sq. ft. and then final area approved in occupation certificate is 1251.62 sq. ft**, Authority is of the view that respondents have received occupancy certificate for the unit in question which is for area 1251.62 sq. ft. As discussed in aforesaid paragraph no. G-VI the respondents shall charge from complainants only for the final area 1251.62 sq. ft. Further due to an increase in area in offer of possession the cost of basic sale price from ₹34,02,906.90/- to ₹35,47,906.83/- and total sale price from ₹37,96,006/- to ₹44,78,360/- has also increased and respondents are charging the same from the complainants. Authority observes that the builder can only increase the Basic Sale Price (BSP) and Total Sale Price (TSP) based on the area mentioned in the Occupation Certificate (OC), provided that the additional area is legally approved. If the OC reflects a certain area, and

that is the approved area, any increase in the BSP or TSP must be directly linked to that approved area. Charging for additional, unapproved area is not permissible under RERA regulations, as the builder is obligated to charge based only on the area for which approvals have been granted by the competent authority.

ii. Secondly, with regard to the **cost escalation charges of Rs 1,52,524/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 07.07.2014. The respondents issued a letter offering possession on 08.06.2023 (not in accordance with the occupation certificate), infact valid offer of possession has not been made till date, despite the deemed date of possession being in 2014, resulting in delay of 9 year. Additionally, the offer dated 08.06.2023 was accompanied with demands which are not acceptable to complainants being unjust and unfair. In said offer, the respondents also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay was solely caused by the

respondents, making it unfair to pass the burden of escalated costs onto the complainants. The complainants, having already endure 9-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondents. Courts have consistently ruled that developers cannot impose additional financial burdens on homebuyers for delays caused by the developers themselves. Therefore, demand raised by the respondents on account of cost escalation charges shall be set aside.

iii. Thirdly, with regard to the demand raised by the respondents on account of **club charges of Rs 50,000**, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational. In this case, it is essential to note that the **Occupancy Certificate (OC)** for the unit has been obtained by the respondents on 20.07.2022. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainants have 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 respondents on account of club charges is also set aside. However, respondents will become entitled to recover it in future as and when proper club will become operational at site.

iv. Fourthly, with regard to the demand raised by the respondents on account of **GST,** Authority is of the view that deemed date of possession in this case works out to 07.07.2014 and charges/taxes applicable on said date are payable by complainants. Fact herein is that GST came into force on 01.07.2017, i.e., post deemed date of possession. So, the complainants are not liable to pay GST charges.

v. Complainants have raised an objection that respondents are charging maintenance charges and holding charges without handing over actual possession. In this regard, it is observed that complainants are liable to pay amount of Interest free maintenance security at the time of handing over of possession and thereafter, maintenance charges and holding charges will become payable after taking over actual physical possession

of unit and after the valid offer of possession is given to the complainants.

vi. Lastly respondents have charged a value added tax (VAT) of ₹32,344/- from the complainants, with regard to the same, Authority is of the view that VAT charged by the respondents are a government tax, therefore, the complainants are liable to pay it. As per clause 9.1 read with clause 1.35 of the agreement, respondents are obligated to pay VAT to the respondents.

24. Now, issue which remains to be adjudicated is delay interest. Respondents had not offered valid possession of unit till date even after receipt of occupation certificate on 20.07.2022. Offer of possession made by the respondents on 08.06.2023 has already been declared null and void by the Authority. Complainants herein are interested in having possession of his unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondents in this case have not made valid offer of possession to the complainants till date. So, the Authority hereby concludes that the

complainants are entitled for the delay interest from the deemed date of possession i.e., 07.07.2014 up to the date on which a valid offer is sent to them after receipt of occupation certificate. For purposes of calculation, delay interest is calculated upto date of this order. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

25. In the present complaint, the complainants intend 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".

26. 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;

27. 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".

28. 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., 16.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

29. Hence, Authority directs respondents to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of

possession i.e. 07.07.2014 to date of valid offer of possession, which is yet to be issued by respondents to complainants. For purpose of calculation delay interest is calculated upto date of this order and for further delay, if any caused by respondents, monthly interest is awarded.

30. Authority has got calculated the interest on total paid amount from due date of possession i.e., 07.07.2014 till the date of order, which works out to Rs. **39,60,181**/- as per detail given in the table below:

Sr. No.	**Principal Amount (in ₹)**	**Deemed date of possession or date of payment whichever is later**	**Interest Accrued till 16.12.2024 (in ₹)**
1.	3154069	2014-07-07 (Deemed date of possession)	3660241
2.	32344	2016-11-22 (Date of payment)	28987
3.	398824	2018-11-05 (Date of payment)	270953
Total	**3585237**		**3960181**
Monthly interest commencing w.e.f. 16.12.2024.	**33,799/-**		

H. DIRECTIONS OF THE AUTHORITY

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

i. Respondent no. 2 is directed to offer possession of the unit within next 45 days alongwith Statement of Account issued in compliance of directions passed in this order incorporating therein delay interest of **₹39,60,181/-** to the complainants towards delay already caused in handing over the possession and monthly interest of **₹33,799/-.**

ii. Further respondent no. 2 is directed to execute the Conveyance Deed within 90 days after handing over of the valid legal possession to the complainants.

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

iv. The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the

respondents/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

v. The respondents shall not charge anything more from the complainants which is not part of the Agreement to Sell.

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

.....
CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]