



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1450 of 2023
Date of filing:	04.07.2023
First date of hearing:	03.08.2023
Date of decision:	18.11.2024

1. Ms. Monika Kukreti,
W/o Rakesh Tripathi,
R/o 38-D, Pocket- K, Sheikh Sarai,
Phase 2, New Delhi- 110017
2. Rakesh Tripathi
S/o A.N. Tripathi,
R/o 38-D, Pocket- K, Sheikh Sarai,
Phase 2, New Delhi- 110017

....COMPLAINANT(S)

VERSUS

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

....RESPONDENTS

CORAM: Nadim Akhtar **Member**
Chander Shekhar **Member**

Present: - Sh. Harshit Goyal, Counsel for the complainant through VC
Sh. Hemant Saini, Counsel for both the respondents.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 04.07.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	BPTP Discovery Park

2.	Nature of the project.	Group Housing Colony
4.	RERA Registered/not registered	Registered under registration no. 297 of 2017 dated 16.10.2017
5.	Details of allotted unit.	Unit No.- B-402, fourth floor, Tower B, measuring 1120 sq.ft.
6.	Date of agreement-	18.10.2012
7.	Endorsement letter	08.07.2015
8.	Deemed date of possession	18.10.2015 (36 months from the date of execution of agreement)
9.	Basic sale price	₹29,06,400/-
10.	Amount paid by the complainant	₹36,61,712.14/-
11.	Occupation certificate	30.01.2024
12.	Offer of possession	23.02.2024
13.	Payment plan	Construction linked plan

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

1. Facts of complaint are that the complaint pertains to a real estate project named BPTP Discovery Park, a group housing colony spanning 16.331 acres



located in Sector 80, Village Badouli, Tehsil and District Faridabad, Haryana. The project, comprising 2BHK and 3BHK apartments along with amenities such as a swimming pool, gym, lounge, and indoor hall, is registered with the Haryana Real Estate Regulatory Authority under Registration No. 297 of 2017, dated 16.10.2017.

2. That the Director of Town and Country Planning, Haryana, granted License No. 44 of 2008 to the respondents for the project's development. A Flat Buyer Agreement for Unit No. B-402, situated on the 4th Floor of Tower B with a super area of 1120 sq. ft., was executed on 18.10.2012 between the original allottees and the respondents, later endorsed in favor of the complainants. The respondents issued a transfer letter on 08.07.2015 confirming this endorsement.
3. As per Clause 3.1 of the Flat Buyer Agreement, the respondents committed to deliver possession of the unit within 36 months. The complainants have already paid ₹36,61,712.14/- of the total sale consideration as demanded by the respondent company. However, despite their investment and reliance on the respondents' promises, respondents have failed to meet their obligations, both as stated in the agreement and communicated orally.



4. That aggrieved by the respondents' failure to deliver as promised, the complainants have filed the present complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017, seeking redressal of their grievances.

C. RELIEFS SOUGHT

5. That the complainant seeks following relief and directions to the respondents:-
- i. To direct respondents to pay Delayed Possession Charges from due date of delivery of possession of 18.10.2015 till date of final offer of possession along with Occupation Certificate in respect of booked unit.
 - ii. To direct respondents to deliver Possession of booked unit along with Occupation Certificate to the complainants.
 - iii. To direct respondents to execute and register Conveyance deed in favour of complainants in respect of booked unit.
 - iv. Any other relief which this hon'ble authority deems fit and proper.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

6. The respondents presented their detailed reply on 22.11.2023, contesting the complainants' claims on several grounds, which are as under:
7. Respondents have challenged maintainability on the ground:
 - a. That the complainants are not "allottees" but rather "investors" who purchased the unit from the open market with full knowledge of the project's development status.
 - b. The respondents contended that the FBA (Flat Buyer Agreement) was executed on 18.10.2012, i.e., prior to the implementation of the Real Estate (Regulation and Development) Act, 2016 (RERA).
 - c. They argued that RERA, Act does not apply retrospectively to agreements made before its implementation and cannot alter the binding terms of the pre-existing FBA. The Haryana RERA Rules, 2017, also clarify that ongoing projects must disclose existing agreements, but such disclosures do not affect the validity of those agreements.
8. That the original allottees, Ms. Pooja Singh and Mr. Siddharth Singh, were allotted Unit No. B-402 in Tower B of "Discovery Park" vide a provisional allotment letter dated 25.07.2011. The allotment was made after the original



allottees expressed their interest, and a discount of ₹1,16,256/- was provided. A Flat Buyer Agreement (FBA) was executed between the original buyers and the respondents on 18.10.2012. Subsequently, the unit was transferred to Mr. Amit Raj Jain on 23.10.2012 and later to the complainants on 29.01.2015, with the final endorsement letter issued on 08.07.2015.

9. That as per Clause 3.1 of the FBA, the possession timeline was 36 months from the sanction date of the building plan or execution of the agreement, with an additional 180-days grace period for obtaining the Occupancy Certificate. The building plans were initially sanctioned on 27.06.2012 but later revised on 26.09.2018. Based on this, the possession deadline extended to 26.03.2022.
10. That the respondents cited force majeure conditions, including:
 - i. The Supreme Court's 2012 directive regulating mining activities, leading to the scarcity and high cost of key raw materials such as sand and gravel.
 - ii. Environmental restrictions and construction bans imposed by the National Green Tribunal (NGT) and the Punjab & Haryana High Court.



- iii. Challenges arising from the **COVID-19 pandemic**, including labor shortages, lockdowns, and curfews from March 2020 onward, which severely disrupted construction.
11. That the respondents applied for the Occupation Certificate (OC) on 20.03.2022, but the statutory authority failed to issue it within the prescribed 60 days. As per the Haryana Building Code, 2017, the unit is deemed to have received the OC after 60 days of application. Thus, the complainants were free to take possession from 20.05.2022.
12. That the respondents alleged that the complainants made their last payment in 2018 and failed to clear the remaining balance despite repeated reminders. They emphasized that the project progressed despite financial challenges posed by defaulting customers.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANTS AND RESPONDENT

13. Ld. counsel for the complainant reiterated the basic facts of the case and stated that that the complainant is seeking possession of the booked unit. As per Clause 3.1 of the agreement dated 18.10.2012, the respondents was obligated to deliver possession of the unit within 36 months from the execution of the building plan, making the deemed date of possession



18.10.2015. However, the respondents have failed to hand over possession of the unit to date. The complainant prays for possession of the unit along with delayed possession charges as per applicable rules.

14. On the other hand, ld. counsel for respondent stated that the Occupancy Certificate (OC) was obtained from the competent authority on 30.01.2024. Subsequently, an offer of possession was made to the complainant on 23.02.2024, but the complainant has failed to take possession of the unit despite the offer being made. With respect to the deemed date of possession, the respondent argued that the obligation to hand over possession arises 36 months from either the date of execution of the Flat Buyer Agreement or the date of sanction of the building plan, whichever is later. The building plans were initially sanctioned on 27.06.2012 but were later revised on 26.09.2018, extending the deadline for possession to 26.03.2022. The respondent further requested that the 180-day grace period be considered in the calculation of the deemed date of possession, citing the disruptions caused by the COVID-19 pandemic as a contributing factor to the delay in delivering possession.

F. ISSUES FOR ADJUDICATION

15. 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

16. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the original allottees, Ms. Pooja Singh and Mr. Siddharth Singh, were allotted Unit No. B-402 in Tower B of project of respondent namely "Discovery Park" vide a provisional allotment letter dated 25.07.2011. A Flat Buyer Agreement (FBA) was executed between the original allottee and the respondents on 18.10.2012. Subsequently, the unit was transferred to Mr. Amit Raj Jain on 23.10.2012 and later to the complainants on 29.01.2015, with the final endorsement letter issued on 08.07.2015. Complainants have paid a total amount of ₹36,61,712/- to the respondent. Basic sale price of the unit was fixed for ₹29,06,400/-

17. Findings on the objections raised by the respondents.

a. Objection regarding execution of flat buyer agreement prior to the coming into force of RERA Act, 2016.

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 18.10.2012 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 complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

- b. Objection raised by the respondent regarding that the complainants are not "allottees" but rather "investors" who purchased the unit from the open market with full knowledge of the project's development status.**



In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainant is aggrieved person who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

“Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

In view of the above mentioned definition of allottee as well as upon careful perusal of flat buyer agreement dated 18.10.2012 and endorsement letter dated 08.07.2015, it is clear that complainant is an allottee as Unit no. B-402, fourth floor in Tower no. B, admeasuring 1120 sq. ft. sq. ft. in the project known as “BPTP Discovery Park” was allotted to him by the respondent promoter. The concept/ definition of investor is not provided or referred to in



RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be a party having status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act stands rejected.

- c. **Objection that RERA does not apply retrospectively to agreements made before its implementation and cannot alter the binding terms of the pre-existing FBA. The Haryana RERA Rules, 2017, also clarify that ongoing projects must disclose existing agreements, but such disclosures do not affect the validity of those agreements.**

Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-



“41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.*

45. *At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.*

53. *That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*



54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

Further, the issue as to where project shall be considered as “on-going project” has been dealt with and settled by the Hon’ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:.

“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect



to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority. ”

Wherein Hon'ble Apex 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.

- d. Ld. counsel for respondent also submitted that that the respondents applied for the Occupation Certificate (OC) on 20.03.2022, but the statutory authority failed to issue it within the prescribed 60 days. As per the Haryana Building Code, 2017, the unit is deemed to have received the OC after 60 days of application. Thus, the complainants were free to take possession from



20.05.2022. With regard to the same, Authority is of the view that the deemed OC argument is dismissed on the grounds that the respondent has not provided adequate proof to substantiate their claim that the statutory authority remained silent within the prescribed 60-day period. Even assuming the deemed OC provision applies, the respondent must still demonstrate readiness and compliance with all contractual terms to enable the complainant to take possession. That mere lapse of 60 days does not automatically transfer possession rights to the complainant without meeting other necessary conditions. Therefore, plea taken by the respondent is rejected.

18. As per clause 3.1 of the Flat Buyer Agreement explicitly states that the respondents were obligated to hand over possession of the unit *“within a period of 36 months from the date of sanctioning of the building plan or execution of the Flat Buyer Agreement, whichever is later.* The respondent, in his reply and during arguments, asserted that the building plans for the project were initially sanctioned on 27.06.2012, and subsequently revised and approved on 26.09.2018. Based on this assertion, the respondent calculated the extended deadline for possession as 26.03.2022 (36 months from the revised date of sanction, with an additional 180 days grace period). Upon reviewing the records submitted by the respondent, it was observed that the



respondent failed to provide any documentary evidence, such as official approvals or sanction letters, to substantiate their claim regarding the initial or revised sanctioning of building plans. This omission undermines the credibility of the respondent's argument and their reliance on the revised sanction date of 26.09.2018. In the absence of proof regarding the sanctioning of the building plans, the Authority deems it appropriate to rely on the execution date of the Flat Buyer Agreement to calculate the deemed date of possession. The Flat Buyer Agreement was executed on 18.10.2012, and as per the stipulated timeline in Clause 3.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of **18.10.2015**.

a. **Objections raised by the respondents regarding force majeure conditions.**

The obligation to deliver possession within the period stipulated in the Flat Buyer Agreement, i.e., 36 months from the date of execution of flat buyer agreement is not fulfilled by respondents till date. There is delay on the part of the respondents and the various reasons given by the respondents such as the Supreme Court's 2012 directive regulating mining activities, leading to the scarcity and high cost of key raw materials such as sand and gravel, environmental restrictions and construction bans imposed by the National



Green Tribunal (NGT) and the Punjab & Haryana High Court are not convincing enough as the due date of possession was in the year 2015 as per the agreement. Further, the respondent argued that the delay in the delivery of possession was due to force majeure, specifically the COVID-19 pandemic, which began in March 2020. The respondent claimed that these unprecedented circumstances, beyond their control, should be considered a valid reason for the delay in construction and delivery of possession. However, the Authority thoroughly examined the situation and noted that the agreed-upon date for possession, as per the Flat Buyer Agreement, was 18.10.2015, which was well before the pandemic started in 2020. The key issue here is that the respondent had a contractual obligation to deliver possession within 36 months of the execution of the agreement, which would have been 18.10.2015. Therefore, the pandemic, which occurred five years later, could not be invoked as a reason for failing to meet the original deadline. Therefore, the Authority rejects the respondents' claim that the COVID-19 pandemic constituted a valid force majeure event that could justify the delay. The obligation to deliver possession by **18.10.2015** still stands, as the force majeure defense raised by the respondent is not valid given that the pandemic occurred after the stipulated possession date.



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.

19. Counsel for respondents have also stated that respondents have duly offered the discount of ₹1,16,257/- to the complainant at the time of booking as a discount on basic sale price as a good will gesture. However, the said fact has been concealed by the complainant. In this regard, Authority deems appropriate to not allow refund of the above said amount to the respondent 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 his willingness to have the booked unit for which he had already paid more than the basic sale price to the respondent. Secondly, since, complainant has performed his part and is taking his unit for which he had paid in advance to respondents for which certain benefits were credited by respondents to complainant. Now, respondents cannot be allowed to take those amounts back since complainant had completed his part of the agreement, however respondents have miserably failed to abide by terms of agreement

20. Findings on the relief sought by the complainants i.e to direct the respondent to handover possession of booked unit alongwith delayed



possession charges at the prescribed interest per annum from the deemed date of possession i.e. 18.10.2015 derived from agreement dated 18.10.2012.

- i) In the present complaint, complainants intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

- ii). Clause 3.1 of FBA of agreement dated 18.10.2012 provides for handing over of possession and is reproduced below:-

“.....the seller proposes to handover the physical possession of the said unit to the purchaser within a period of 36 months from the date of sanctioning of the building plan or execution of flat buyer agreement, whichever is later.”

Clause 3.1 of the Flat buyer agreement dated 18.10.2012, provides for handing over of possession within 36 months from execution of builder buyer agreement which comes to **18.10.2015**.



21. **Finding w.r.t grace period:** The promoters had agreed to handover the possession of floor within 36 months from the date of execution of flat buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate with respect to the unit in question. Since, the later clause of approval/sanctioning of building plan is vague, ambiguous and arbitrary, 36 months from the date of execution of flat buyer agreement is taken as the date for calculating the deemed date of possession i.e. 18.10.2015. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement, i.e, immediately after completion of construction works within 36 months. Thus, the period of 36 months expired on 18.10.2015. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.
22. In view of above observations given in the preceding paragraphs of this order, Authority summarizes its observations in the matter as under:
- i. Flat buyer agreement that finally crystalized the terms of agreement was executed between both the parties on 18.10.2012. As per clause 3.1 of the



agreement and the observations as recorded in para 18 of this order, possession of the unit should have been delivered by 18.10.2015. It is an admitted fact that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement and delivery of possession of the unit has also been delayed by the respondent. Authority observes that vide application dated 27.09.2024 filed by the respondent, occupancy certificate has been received by the respondent from the competent department on 30.01.2024. Copy of occupancy certificate dated 30.01.2024 has been annexed by the respondent as Annexure A of application dated 27.09.2024. Subsequently, after receipt of occupancy certificate, respondent made a valid offer of possession accompanied by the Occupancy certificate on 23.02.2024. However, rather than promptly approaching the respondent company to accept the valid offer of possession, the complainants chose to remain silent after receipt of offer of possession. When the respondent had already made a valid offer of possession on 23.02.2024, the complainants were legally obligated to accept this offer, as it was made following the issuance of the occupancy certificate and was free from any legal hindrances. By not responding to this offer, the complainants effectively neglected their duty to accept



possession at the appropriate time. This delay in responding to the initial valid offer raises questions about why the complainants did not accept the offer when it was first made. As the offer made on 23.02.2024 was compliant with all legal requirements and the project was free of any disputes, the complainants should have promptly accepted it rather than waiting. In light of such circumstances, Authority is of the view that that the offer of possession made by the respondent on 23.02.2024 is legally valid as offer was made after the occupation certificate had been issued for the project in question. Consequently, the complainants were expected to accept the offer of possession at that time.

- ii. However, the fact remains the same that complainants are insisting on possession of booked unit only and do not want to exist from the project. Further, respondents have made a considerate delay in offering a legal and valid offer of possession to the complainant. Therefore, complainants have sought delay interest w.e.f. 18.10.2015, i.e., after expiry of 36 months from execution of the flat buyer agreement.
- iii. In the present complaint, the complainants intend to continue with the project and are 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”.

iv. Complainants however are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In such 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 plot the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. Hence, the Authority hereby concludes that the complainants is entitled for the delay interest from the deemed date, i.e., 18.10.2015 till the date on which a legally valid offer is made to them after obtaining occupation certificate, i.e., 23.02.2024. 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;

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. 18.11.2024 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.

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

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

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”.



Authority has got calculated the interest on total paid amount from due date of possession, i.e., 18.10.2015 till the date of legally valid offer of possession is made i.e. 23.02.2024 which works out to ₹14,58,594/-

Sr. No.	Principal Amount In ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.02.2024 In ₹
1.	457780	2016-12-30	363630
2.	427188	2017-05-23	320623
3.	754204	2018-01-29	508493
4.	205933	2018-04-16	134020
5.	205933	2018-05-21	131828
	2051038		1458594

Note- Despite repeated directions given by the Authority to the complainant vide order dated 30.09.2024 and 01.07.2024 wherein complainant was directed to file receipts of the paid amount as statement of account annexed by the complainant bore no date. However complainant failed to comply with the said directions. Therefore, receipts given by the respondent in his reply book has been taken on record as proof of payment made by the complainant.

F. DIRECTIONS OF THE AUTHORITY

24. 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. Complainants are directed to accept the offer of possession issued by the respondent on 23.02.2024 and take physical possession of the booked units from the respondent.
- ii. Respondent is directed to pay upfront delay interest as calculated in para 23 of the order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.
- iii. Respondent is directed to get conveyance deed of flat of the complainants 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.
- iv. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e.,



11.1% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]