



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1336 of 2020
Date of filing:	20.11.2020
First date of hearing:	28.01.2021
Date of decision:	04.11.2024

1. Sh. Bijender Kumar,
S/o Sh. Vijay Pal Sharma,
R/o D-433/A, Street-10,
Bhajanpura, Delhi-110053

2. Smt. Asha Sharma
W/o Sh. Bijender Kumar,
R/o D-433/A, Street-10,
Bhajanpura, Delhi-110053

...COMPLAINANT(S)

VERSUS

M/s BPTP Limited
(through its authorized representative/ Director,
Registered office- OT-14,
3rd Floor, Next Door Parklands,
Sector-76, Faridabad, 121004

...RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Bijender Kumar, complainant in person
Sh. Hemant Saini, Counsel for both the respondent.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 20.11.2020 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 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 Premium, Parklands, Faridabad
2.	RERA Registered/not	Registered vide license no. 62 of



	registered	2010 dated 14-08-2010
3.	Details of allotted unit.	Unit No. B-903, 96 sq. ft., 9 th Floor
4.	Date of Flat buyer Agreement-	07.02.2012
5.	Deemed date of possession	07.02.2015 (36 months from the date of execution of agreement)
6.	Basic sale price	₹32,83,949/-
7.	Amount paid by the complainant	₹23,77,900/-
8.	Occupation certificate	21.08.2023
9.	Offer of possession	Not issued
10.	Payment plan	Construction linked plan

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

3. Facts of the present complaint are that the complainants purchased Unit No. B-903, admeasuring 906 sq. ft., located on the 9th floor of the respondent's project, from Ms. Archie Elaine Bandyopadhyay ("previous allottee"). Relevant documents, including the endorsement form and nomination letter



executed on 02.01.2013, are annexed as Annexure C1 and C2. The respondent informed the complainants that the previous allottee had already paid more than 95% of the total sale consideration and assured them that all necessary project sanctions had been obtained. Additionally, the respondent highlighted features of the project, including landscaped green areas, jogging tracks, 24*7 security, a recreational club, a shopping center, and power backup. Relying on all these facilities, complainants purchased the said unit from the original allottee.

4. Respondent did not execute a new Flat Buyer's Agreement with the complainants. Instead, a Flat Buyer's Agreement dated 07.02.2012 (Annexure C4), initially executed with Mr. Ashok Kumar (the first allottee), was endorsed in favour of the complainants on 02.01.2013. The complainants were informed in February 2013 that the unit was originally purchased by Mr. Ashok Kumar. The respondent conveyed that the possession of the unit was due on 06.05.2014 and, with a six-month grace period, possession was to be delivered by 06.11.2014. The complainants, trusting on the respondent's assurances, availed a home loan from HDFC Bank, with the agreement that the balance sale consideration would be paid directly to the respondent as per its demands. Loan documents are appended as Annexure C5 (colly).



5. That under Clause 3.1 of the Flat buyer's Agreement, respondent was required to deliver the possession within 36 months of the issuance of the colony sanction letter. Despite obtaining building plan sanctions in 2011, the agreement executed in 2012, ambiguously extended the delivery timeline. Furthermore, the compensation offered by the respondent for delays @₹5 per sq. ft. of super area per month was meager as compared to the 18% per annum interest demanded from the purchasers for delayed payments.
6. That towards the end of 2014, the complainants discovered during a site visit that the construction of unit was incomplete and payments were demanded ahead of the construction stages. On 05.11.2016, respondent demanded ₹24,432.10/- towards VAT liability, threatening to charge 18% per annum interest for non-payment. Despite the complainants' objections, they paid the amount of ₹24,432.10/- (receipt appended as Annexure C7). This demand for VAT was unjustified, especially since possession was due on 06.05.2014, any subsequent VAT liability was the respondent's responsibility.
7. That the project has faced significant delays, and the complainants could not ascertain installment due dates due to the respondent's failure to provide construction updates. Except for the VAT demand letter, the respondent has not communicated with the complainants in the last seven years. Any interest



claims by the respondent is unwarranted as per the given circumstances. The respondent has deliberately failed to fulfill its contractual obligations under the Flat Buyer's Agreement dated 07.02.2012.

8. That the subject matter falls within the jurisdiction of this Hon'ble Authority. The project is registered under Registration No. HIRERA-PKL-191-2020 dated 24.02.2020. The registration certificate is appended as Annexure C8.

C. RELIEFS SOUGHT

9. That the complainants seek following relief and directions to the respondent:-
- i. That the respondent may kindly be directed to deliver possession of the unit in question after completing and installing all the facilities, amenities and services as portrayed in the brochure and the buyer's agreement.
 - ii. That the respondent may kindly be directed to pay delayed possession interest/charges to the complainants for the period of delay (i.e. from June 2014) calculated at the prescribed rate of interest on the total amount deposited with the respondent till the delivery of possession of the unit in question.
 - iii. That the respondent may kindly be directed to deliver copies of occupation certificate, deed of declaration and copies of all the



approvals from the competent statutory authorities to the complainants at the time of offer of possession of the unit in question.

- iv. That this Hon'ble Authority may kindly declare that the Flat Buyer's Agreement dated 07.02.2012 is arbitrary, unjust, unilateral and unfair and consequently, not binding upon the complainants.
- v. That the respondent may very kindly be directed to pay an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) alongwith interest at the rate of 6% per annum as compensation for the rent and the collateral expenses incurred by the complainants while living in an alternate accommodation.
- vi. That the respondent may very kindly be directed to refund the amount of Rs. 24,432.10/- alongwith interest at the rate of 12% per annum calculated from November, 2016 till the payment thereof to the complainants.
- vii. That the respondent may very kindly be directed to pay an amount of Rs. 10,00,000/- (Rupees Ten Lacs Only) towards mental agony and harassment suffered by the complainants at the hands of the respondent.



- viii. That the respondent may kindly be directed to not penalize the complainants with interest on any payment after June, 2014.
- ix. That the respondent may kindly be directed not to charge holding charges, maintenance charges, till the delivery of the unit in question, complete in all respects.
- x. That the respondent may kindly be directed to pay an amount of Rs.1,00,000/- as litigation expenses incurred by the complainants.
- xi. That the respondent may very kindly be penalized for contravention of the provisions of the Act as well as for cheating and defrauding the intending allottees, including the complainants.
- xii. Any other relief/direction as may be deemed expedient in the interest of the complainants.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. The respondent presented their detailed reply on 04.12.2023, contesting the complainants' claims on several grounds, which are as under:
11. That the captioned complainant is liable to be dismissed on the grounds as under:
 - i. That the complainants, as subsequent allottees, cannot claim the same benefits or compensation as the original allottee, as they voluntarily



- purchased the unit with full knowledge of its status. They assert that any delay penalty should be calculated from the date of endorsement to the complainants (02.01.2013) and not the original allotment date.
- ii. The respondent argues that the Flat Buyer Agreement (FBA), executed on 04.02.2012, predates RERA and remains binding, governing the relationship between the parties. They assert that RERA provisions cannot be retroactively applied, and no relief beyond the agreed terms of the FBA can be claimed. The agreement reflects mutual consent and cannot be reinterpreted to create new obligations or entitlements beyond its literal terms.
- iii. The respondent contends that the complainants are barred by limitation, laches, and estoppel from disputing charges and terms outlined in the Flat Buyer Agreement (FBA). They argue that the complainants, as successors to the original allottees, willingly accepted the terms, including penalties and cost escalation, and have benefited from discounts like the Timely Payment Discount (TPD). The agreement was entered into voluntarily, and the complainants cannot now contest its terms.

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- iv. The respondent argues that the complaint cannot be adjudicated in summary proceedings due to the complainants' concealment and misrepresentation of material facts. The allegations raised require proper adjudication, including the presentation of evidence and cross-examination.
12. The Respondent has presented a comprehensive defense against the allegations raised by the Complainants regarding the project *Park Elite Premium*. The respondent addresses several key points, including:
- i. The Respondent asserts that Phase I of the project has been completed and is fully operational. The necessary facilities such as landscaping, security, intercom, CCTV, roads, and streetlights are in place, and Occupation Certificates have been issued for Phase I. For Phase II, construction is complete, and the Respondent has applied for the OC on 10.05.2019. The possession of units in Phase II will be offered once the OC is received.
 - ii. The Respondent notes that the Complainants availed a TPD benefit of Rs. 53,329.09 for timely payments, demonstrating their participation in the incentives offered by the Respondent. However, despite this, a



significant number of customers failed to make timely payments, leading to delays in the project.

- iii. The Respondent clarifies that they had the necessary approvals and licenses from October 2005. The project was developed in compliance with the Haryana Development of Urban areas Act, 1975 and all necessary approvals for construction were obtained. The Complainants' allegations regarding lack of approval are therefore incorrect.
- iv. The Respondent points out that the Complainants had purchased the unit from a second allottee (Ms. Archie Elaine Bandyopadhyay) and was aware of the terms and conditions before executing the agreement. The Respondent refutes claims by the Complainants that they were misled or unaware of the details.
- v. The Respondent acknowledges delays due to various factors including legal amendments, labor shortages, material shortages, and force majeure events. These factors are cited as the reason for the delay in offering possession. The Respondent highlights that the agreement contains provisions allowing reasonable extensions of time in case of delays, and penalty clauses were included to address such situations.



- vi. The Respondent asserts that all charges, including those for VAT, maintenance, and electricity, were disclosed upfront and agreed upon in the Booking Form and Flat Buyer's Agreement (FBA). The additional charges, including those for power backup, were justified and properly explained to the Complainants.
 - vii. The Respondent defends the terms of the FBA, asserting that the agreement is balanced, with clear provisions for both parties' protection. The agreement provides exit options for the customer, including a refund in case of significant changes to the project and in case of delay beyond a reasonable period.
 - viii. The Respondent emphasizes that all demands for payments were based on milestones and agreed payment schedules. The Respondent maintains that the charges for VAT, electrification, and other aspects were in line with the contract terms.
13. Furthermore, the complainant has filed applications dated 30.04.2024, 21.05.2024, and 12.08.2024 to support their claims. These applications highlight objections regarding the demand letters issued by the respondent, the occupation certificate provided by the respondent, and include proofs of payments made by the complainant. In response, the respondent has submitted



applications dated 06.09.2024 and 04.11.2024, which include a statement of receivables and payables, an offer of possession dated 07.09.2023, email correspondence, and photographs of the unit. The Authority has thoroughly reviewed all submissions to ensure a fair and balanced adjudication of the case.

E. ARGUMENTS OF LEARNED COUNSELS FOR THE COMPLAINANTS AND RESPONDENT

14. Complainant Mr. Bijender Kumar, reiterated the basic facts of the case. He further stated that an offer of out of court settlement was offered by the respondent during the previous hearings, the complainants approached the respondent with the intention to amicably settle the matter. However, the respondent began demanding maintenance charges for the past year. The complainant contends that he requested the respondent to charge maintenance fees only from the date of actual possession. In compliance with the Authority's order dated 12.08.2024, the respondent issued a settlement letter, which the complainants duly replied to. The primary grievance of the complainants regarding maintenance is that, in addition to maintenance charges, the respondent is also demanding cost escalation charges and GST charges from the complainants.



15. On the other hand, learned counsel for the respondent submitted that the complainants visited the respondent's project, where the respondent demanded maintenance charges as per the Authority's previous order dated 12.08.2024. The Authority had directed the complainants to pay advance maintenance charges of ₹94,360/- to the maintenance agency. However, the complainants requested the respondent to provide a written assurance that only these maintenance charges would be borne by the complainants and that no additional charges would be imposed. Furthermore, learned counsel for the respondent mentioned that an application is being filed today, which includes a CA certificate, the offer of possession made to the complainants, and photographs of the complainant's unit.

F. ISSUES FOR ADJUDICATION

13. 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 respondent.

G.I. Objection with regard to that the complainants, as subsequent allottees, cannot claim the same benefits or compensation as the original allottee, as they voluntarily purchased the unit with full knowledge of its status.



With regard to the same, Authority is of the view that the unit in question was initially allotted to Mr. Ashok Kumar. Subsequently, the unit was purchased by Ms. Archie Elaine Bandyopadhyay, and thereafter it was acquired by the complainants. Initially, a Flat Buyer Agreement was executed between the respondent and the first allottee, Mr. Ashok Kumar, on 07.02.2012. The ownership of the unit was later transferred to the complainants through an endorsement letter dated 02.01.2013. The Authority is of the view that when such an endorsement takes place, all rights and liabilities associated with the unit are transferred from the previous allottee to the subsequent allottee. Therefore, any terms and conditions that were binding upon the original allottee under the agreement dated 07.02.2012 now become applicable to the complainants. The Authority rejects the respondent's contention that subsequent allottees cannot claim the same benefits or compensation as the original allottee. This argument is untenable under the law, as the complainants effectively step into the shoes of the original allottee. Consequently, all terms, conditions, obligations, and rights established under the agreement executed with the original allottee shall now equally apply to the complainants.

G.II. Objection with regard to the maintainability 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 respondent 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, respondent has 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 flat buyer agreement dated 07.02.2012 is admitted by the respondent. Said flat buyer agreement was binding upon both the parties. As



such, the respondent is under an obligation to hand over possession on the deemed date of possession and in case, the respondent 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. 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 19stoppels19ng 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.

G.IV. The respondent contends that the complainants are barred by limitation, laches, and estoppels from disputing charges and terms outlined in the Flat Buyer Agreement (FBA).

Reference in this regard is made to the judgement of Hon'ble Apex court Civil Appeal No. 4367 of 2004 titled as "M.P Steel Corporation v/s Commissioner of Central Excise". Relevant part of the said judgment is reproduced here under:-

"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963." 20. *In Kerala State Electricity Board v. T.P*"

The promoter has till date failed to fulfill his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

G.V. Objection with regard to the fact that the respondent argues that the complaint cannot be adjudicated in summary proceedings due to the complainants' concealment and misrepresentation of material facts.



The respondent has failed to specifically identify or articulate any particular issue that is incapable of being resolved through summary proceedings. It is well established that for such an objection to hold ground, the respondent must clearly demonstrate the specific issues that require detailed examination, complex evidence, or an exhaustive inquiry that goes beyond the scope of summary proceedings.

G.VI Objection regarding deemed date of possession.

Admittedly flat buyer agreement was executed between the parties on 07.02.2012 and as per clause 3.1 of it, possession was supposed to be delivered within 36 months from date of issuance of the sanction letter of the colony alongwith grace period of 180 days for applying and obtaining the occupation certificate from the competent authority. Both the parties has failed to provide the exact date and documents proving as to when sanction letter of the colony was issued. So without having any exact date of issuance of sanction letter, 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 07.02.2012, 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 **07.02.2015**.



Further, Respondent in its written statement have taken a plea that grace period of 180 days be allowed as respondent had received occupation certificate on 21.08.2023. In this regard, Authority is of view that if the respondent had completed the construction within 36 months of execution of agreement, i.e., by 07.02.2015, then time period of 180 days was provided for applying for occupation certificate. Here in this 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 could have been started from 07.02.2015 got extended by another 8 years, as occupation certificate was received by respondent on 21.08.2023. Time period of 8 years taken by respondent 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. 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.V. Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case works out to 07.02.2015. Therefore, question arises for determination as to whether any situation or



circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondent or not? There is delay on the part of the respondent and the various reasons given by the respondent such as changed norms for water usage, change in law pertaining to provision of additional fire stair case, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labor and construction material, etc. are not convincing enough as respondent himself had promised to deliver possession of unit to complainants so any delay if has occurred during completion of apartment, the respondent cannot burden it upon complainants. Complainants are not at fault for trusting respondent by depositing the consideration amount to respondent in return of delivery of possession of unit. Therefore, now, the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. Moreover, the respondent has not provided the stage wise construction status of unit in question with relevant photographs on record to support the fact that respondent has fulfilled its obligations and it is complainants who are shying away from their duties/obligations. So, the plea



of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

G.VI. Counsel for respondent has also stated that the Complainants availed a TPD benefit of Rs. 53,329.09/- for timely payments, demonstrating their participation in the incentives offered by the Respondent. However, the said fact has been concealed by the complainants. In this regard, Authority deems appropriate to not allow refund of the above said amount to the respondent for two fold reasons. Firstly, complainants are not interested in withdrawing from the project and is willing to continue and wait till project gets completed, meaning thereby, complainants are sticking to their decision and showing their willingness to have the booked unit for which he had already paid more than the basic sale price to the respondent in the year 2016 itself. Secondly, since, complainants have performed their part and are interested taking their unit for which they had paid in advance to respondent for which certain benefits were credited by respondent to complainants. Now, respondent cannot be allowed to take those amounts back since complainants had completed their part of the agreement; however respondent has miserably failed to abide by terms of agreement.



14. Furthermore, the Authority observes that the respondent has filed an application dated 06.09.2024, which includes an offer of possession letter dated 07.09.2023. This letter states: *"You would be pleased to know that our project, Park Elite Premium, situated in Sector 84, Faridabad, Haryana, is ready for delivery. We have received the Occupation Certificate from the concerned Authority vide MEMO No. ZP-651/JD(NK)/2023/27340, dated 21/08/2023, for the Tower/Building in which your unit is situated."* The subject of this offer clearly reads: *"Offer of possession for flat no. B-903 in Tower B admeasuring approximately 971.00 sq. ft. (90.21 sq. mtr.) in our project Park Elite Premium at Sector 84, Faridabad, Haryana."* This indicates that an offer of possession was made to the complainants after obtaining the Occupation Certificate (OC) for the unit in question, admeasuring 90.21 sq. mtr. Further, the Occupation Certificate (MEMO No. ZP-651/JD(NK)/2023/27340, dated 21/08/2023, downloaded from the website of the concerned Authority, pertains to the respondent promoter (BPTP Ltd., License No. 62 of 2010). Upon review of the said Occupancy certificate, it is observed that the Directorate of Town and Country Planning (DTCP) issued the certificate for a total FAR area of 6158.76 sq. mtr., covering 80 dwelling units in Tower-B. This equates to an approved unit area of 76.98 sq. mtr.,



which is significantly lower than the size of 84.169 sq. mtr. promised in the Flat Buyer Agreement. 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 respondent can justifiable claim from complainants. Demand of 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, in respect of issue of difference in area as provided in offer of possession dated 07.09.2023, i.e. 90.21 sq. mtr. and occupation certificate dated 21.08.2023, i.e. 76.98 sq. mtr., Authority observes that respondent is entitled to charge only for the area of the unit which is actually to be provided to allottee 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 allottee. 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 respondent but; cannot be charged independently making it a chargeable component of unit. Hence, respondent is directed to re-calculate the price of area of unit, with size of 76.98 sq. mtr.. 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 07.09.2023 null and void. Since the offer of possession was not made in accordance with the approved OC, the offer dated 07.09.2023 holds no legal significance.

15. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. B-903, admeasuring 84.169 sq. mtr. (Now area of unit as discussed in aforesaid paragraph is 76.98 sq. mtr.) had been allotted to complainants in the project of the respondent namely "Park Elite Premium" situated in Sector-84, Faridabad, Haryana vide flat buyer agreement dated 07.02.2012 executed between first allottee (Mr. Ashok Kumar) and respondent and vide endorsement letter 02.01.2013, possession of the unit should have been delivered by 07.02.2015.
16. Authority further observes that possession of the unit should have been delivered by 07.02.2015 but it is an admitted fact that respondent had miserably failed to fulfill his obligation to deliver the possession of the unit



within stipulated time. Now, respondent is in receipt of occupation certificate on 21.08.2023 but valid offer of possession as per terms of the agreement has not been made thereafter to the complainants till date.

17. Further, ld. counsel for complainants objected to demand of Rs 5,77,745/-+ GST raised on account of cost escalation, increase in Basic sale price and total sale price due to increase in size and maintenance charges, levy of VAT of ₹24,432.10/- etc.
18. 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 84.169 sq. mtr to 90.21 sq. mtr. and then final area approved in occupation certificate is 76.98 sq. mtr.**, Authority is of the view that respondent has received occupancy certificate for the unit in question which is for area measuring 76.98 sq. mtr.. As discussed in aforesaid paragraph no. 14 the respondent shall charge from complainants only for the final area measuring 76.98 sq. mtr. Further due to an increase in area in offer of possession the cost of basic sale price and total sale price has also increased and respondent is charging the same from the complainants. Authority observes that the builder can only increase the Basic Sale Price (BSP) and Total Sale Price



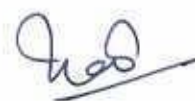
(TSP) based on the area mentioned in the Occupation Certificate (OC), provided that the additional area is legally approved. If the OC reflects a certain area, and that is the approved area, any increase in the BSP or TSP must be directly linked to that approved area. Charging for additional, unapproved 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. 5,77,745/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 07.02.2015. The respondent issued a letter offering possession on 07.09.2023 (which is 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 2015, resulting in delay of 8 year. Additionally, the offer dated 07.09.2023 was accompanied with demands which are not acceptable to complainants being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which are 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 respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainants, having already endure 8-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. 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 respondent on account of cost escalation charges is hereby rejected and set aside.

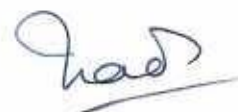
- iii. Fourthly, with regard to the demand raised by the respondent on account of **GST**, Authority is of the view that deemed date of possession in this case works out to 07.02.2015 and charges/taxes applicable on said date are payable by complainants. Fact herein is that GST came into force on 01.07.2017, i.e., post deemed date of possession. So, the complainants are not liable to pay GST charges.
- iv. With regard to the maintenance charges it is already clarified by the Authority vide its order dated 12.08.2024, wherein Authority issued directions to the complainants to make payment of ₹94,360/- as



maintenance charges to the maintenance agency of the project in order to take actual possession of the unit in question from the respondent. Further, complainants have raised an objection that respondent is charging holding charges without handing over actual possession. In this regard, it is observed that 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.

v. Lastly respondent has charged a value added tax (VAT) of ₹24,432.10/- from the complainants, with regard to the same, Authority is of the view that VAT charged by the respondent are a government tax, therefore, the complainants are liable to pay it. As per clause 9.1 read with clause 1.36 of the agreement, complainants are obligated to pay VAT to the respondent.

19. Now, issue which remains to be adjudicated is delay interest. Respondent had not offered valid possession of unit till date even after receipt of occupation certificate on 21.08.2023. Offer of possession made by the respondent on 07.09.2023 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 respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made 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., 07.02.2015 up to the date on which a valid offer is sent to them as per above directions of the Authority. 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.

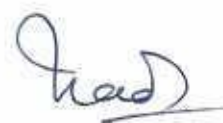
20. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

“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”.

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-

07.. *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., 04.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

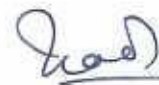


24. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of possession i.e. 07.02.2015 to date of valid offer of possession, which is yet to be issued by respondent to complainants. For purpose of calculation delay interest is calculated upto date of this order and for further delay, if any caused by respondent, monthly interest is awarded.

25. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 07.02.2015 till the date of order, which works out to Rs. 25,73,663/- 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 04.11.2024 (in ₹)
1.	23,77,900	07.02.2015 (Deemed date of possession)	25,73,663

Upon reviewing the application dated 12.08.2024 filed by the complainant, wherein the complainant has annexed documents as evidence of the amount paid, the Authority notes that the complainant has not provided a proper tabular format clearly detailing the amounts paid and their corresponding dates. In the absence of this crucial information, the Authority finds it appropriate to rely on the account statement submitted by the respondent in their application dated 06.09.2024. This statement outlines the payments received from the complainant, along with the respective dates of payment. The



respondent's application also includes the payment of VAT; however, interest has not been calculated on this amount, as it constitutes a government levy that the complainant was obligated to pay.			
Monthly interest commencing w.e.f. 07.02.2015.	21,694/-		

26. The complainants are also seeking compensation of Rs. 5,00,000/- alongwith interest at the rate of 6% per annum as compensation for the rent and the collateral expenses incurred by the complainants while living in an alternate accommodation, Rs. 10,00,000/- (Rupees Ten Lacs Only) towards mental agony and harassment suffered by the complainants at the hands of the respondent, Rs.1,00,000/- as litigation expenses incurred by the complainants. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with



the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

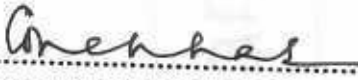
H. DIRECTIONS OF THE AUTHORITY

27. 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 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 ₹25,73,663/- to the complainants towards delay already caused in handing over the possession and monthly interest of ₹21,694/-
 - ii. Further respondent 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 respondent at the time of actual possession offered to them in terms of this order of the Authority.



- iv. The rate of interest is chargeable from the complainants by the respondent, in case of default shall be charged at the prescribed rate i.e., 11.10% which is the same rate of interest which the respondent shall be liable to pay to the complainants.
- v. The respondent shall not charge anything more from the complainants except what is decided by the Authority in this order.

Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]