HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1732 of 2022**
Date of filing.:	**17.08.2022**
First date of hearing.:	**14.10.2022**
Date of decision.:	**28.01.2025**

1. Shashank Aggarwal, S/o Sh. Mahesh Chand Aggarwal
2. Tina Aggarwal, W/o Sh. Shashank Aggarwal
Both R/o, 23, 6/16, Roop Nagar, North Delhi,
Delhi-110007

....COMPLAINANT(S)

VERSUS

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

....RESPONDENT

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

Present: - Sh. Arjun Kundra, Learned counsel for the complainants
Sh. Tejeshwar Singh, proxy counsel for the respondent

Rathee

ORDER:

1. Present complaint has been filed on 17.08.2022 by 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 Floors, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-304-FF , 1st floor, admeasuring 1371 Sq. Ft.
5.	Date of Original Allotment	24.12.2009; Originally allotted unit no. J-12A-FF, admeasuring 876 sq.ft. (81.38 sq.mtrs)
6.	Re-allotted Unit	On 06.03.2014; unit no. PE-304-

		FF; admeasuring 1371 sq.ft.
7.	Date of buyer agreement with complainants	NA
8.	Total/Basic sale consideration	For area of 876 sq.ft. rate is ₹1835.62/- per sq.ft i.e. ₹ 16,08,003.12/- and for increased area of 495 sq.ft rate is ₹ 2425/- per sq.ft. i.e. ₹ 12,00,375/-
9.	Amount paid by complainants	₹27,54,350.28/-
10.	Offer of possession.	06.12.2023
11.	Date of occupation certificate	09.11.2023

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

3. That the complainants have applied for booking of an independent residential floor in year 2009 in respondent's project namely -'Park Elite Floors, Faridabad' by paying booking amount of ₹ 1,79,891.55/-. Vide allotment letter dated 24.12.2009 unit bearing no. J-12A-FF was allotted to the complainants.

4. That respondent vide letter dated 06.03.2014 changed the unit of complainants from J-12A-FF to unit no. PE-304-FF, admeasuring 1371 sq.ft. in the same project. It is stated that re-allotment was for the reason solely attributed to respondent, complainants never intended to change their unit as they were aware that same could lead to unnecessary delay. Complainants alleges that at time of booking in August 2009, respondent promised to handover possession within a period of 24 months. Further, it is a settled law that delivery of the unit ought to have been made with reasonable time and there can be no deviation from that. Complainants have also quoted judgment of Hon'ble Supreme court of India passed in **"Fortune Infrastructure and Ors Vs. Trevor D'lima and Ors".**

5. That till date, complainants have paid an amount of ₹ 27,54,350.28/- i.e. almost entire amount from year 2009-2018, as and when demanded by the respondent. Copies of payment receipts and statement of account dated 05.02.02021 issued by respondent are annexed as Annexure C-5. However, respondent had failed to execute buyer agreement till date.

6. That though complainants have made all the payments on time, respondent miserably delayed the construction and development of the project. Respondent has time and again extended the probable date for the completion of the project, thus misleading the complainants. Copies of the emails reflecting the unilateral change/extension in due date of

possession have been annexed as Annexure C-6. The complainants on the other hand had already made the payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the respondents. The possession of the residential floor has been due since 2016 but till date the same has not been delivered and there is no sign of completion of the same in the near future. The respondent company has committed gross deficiency in services and indulged in unfair practices.

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

C. RELIEF SOUGHT

8. That the complainants are seeks following reliefs and directions to the respondent: -

   i. Direct the respondent to deliver immediate possession of the floor of the complainants i.e. PE-304-FF, BPTP Park Elite Floors, Parklands, Faridabad, Haryana admeasuring 1371 sq ft. to the complainants after due completion and receipt of occupancy & completion certificate(s) along with all the promised amenities and facilities and to the satisfaction of the complainant; and

ii. Direct the respondent 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. 06.03.2016 till the actual physical and legal delivery of possession; and

iii. Pass an order restraining the respondent from charging any amount from the Complainants which are illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainants.

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

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 04.12.2023 pleading therein:

9. That complainants have booked residential floor unit vide booking form dated 20.05.2009. Vide allotment letter dated 24.12.2009, a provisional unit bearing no. J-12A-FF, admeasuring 876 sq.ft was allotted to the complainant. Thereafter, vide letter dated 06.03.2014, unit was changed from J-12A-FF to PE-304-FF admeasuring 1371 sq.ft with consent of

complainants. It is mentioned that re-alllotment vide letter dated 06.03.2014 was conditional subject to clearance of next demand with due date. Complainants have paid and acknowledged all the demands as and when raised till year 2018.

10. That the project "Park Elite Floors" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, in present case the respondent had to encourage additional incentives like timely payment discounts of ₹ 94,327/- and inaugural discount of ₹ 94,327/- given to complainants. Further, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the Respondent such as ban on construction by the Hon'ble Supreme Court of India in "**M.C. Mehta v. Union of India**", ban on construction by the Principal Bench of NGT in "**Vardhaman Kaushik v. Union of India**" and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on

31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the complainant and respondent herein.

E. REJOINDER FILED BY COMPLAINANTS ON 12.02.2024 RAISING ADDITIONAL ISSUES

11. That respondent after receipt of occupation certificate dated 09.11.2023 had issued an offer of possession dated 06.12.2023. It is the submission of complainants that said offer of possession is illegal because there is no mention of delay interest on account of delay caused in offering the possession and is accompanied with illegal demands. Further, as per the allotment letter dated 06.03.2014, the super built up area of the present unit/floor was 1371 sq.ft . The alleged offer of possession dated 06.12.2023 also mentions the super built up area of the present unit/floor as 127.37 sq. mtr., or 1371 sq ft, where, in the occupation certificate dated 09.11.2023, the area of the unit mentioned is only 95.988 sq. mtr or 1033 sq ft.. This clearly proves discrepancies in the alleged occupation certificate and offer of possession, statement of receivables and payables. therefore, the offer of possession dated 06.12.2023 is illegal and against the settled principles of the RERA Act, 2016 and same need to be offered afresh in terms of RERA Act, 2016.

12. Few of the concerns of the complainants mentioned in rejoinder in brief, are encapsulated herein below:

i. No provision for the compensation & delay interest, etc.,, to the complainants was given in the final statement issued with offer of possession. The complainants are entitled to prescribed rate of interest as per the Act for the period of delay.

ii. The complainants are entitled to prescribed rate of interest as per the Act for the period of delay.

iii. Unilateral increase in total sale price of the unit-from Rs. 30,92,177.96/- as per the Statement of Account dated 05.02.2021 (Pg. no. 42 of the complaint) and now illegally enhanced to Rs. 34,90,081.12/-.

iv. Cost escalation- The reasons for the cost escalation- Rs. 1,45,435.68/- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.

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

vi. That there is no occupation certificate and completion certificate attached.That further the alleged OC dated 09.11.2023 is for a smaller area of the floor/Unit.

vii. Illegal undertaking/indemnity attached with the alleged offer of possession (page- 15-19 of rejoinder).

viii. GST has been wrongly imposed on the complainants.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENT

13. Ld. counsel for complainants reiterated his submissions and pressed upon for relief of possession of booked unit alongwith delay interest. He further stated that respondent be directed to charge only for the area against which the occupation certificate has been granted by the competent authority, i.e., 95.988 sq. mtr or 1033 sq.ft. He referred to his rejoinder wherein he has raised objection to the offer of possession dated 06.12.2023 and requested to direct respondent not to charge illegal demands/taxes from complainants at the time of offer of physical possession of the floor.

14. Ld. counsel for respondent argued that complainants nowhere in its pleadings as well as in relief sought has mentioned anything related to difference of area for which occupation certificate has been provided. He stated that relief beyond pleadings/relief sought cannot be awarded to complainants. In support, he read all the issues to be decided alongwith relief sought at the time of hearing. In respect of difference in area of unit allotted in agreement/mentioned in offer of possession and mentioned in occupation certificate, he stated that final super area of the unit stands as

1371 sq. ft.. Complainants herein attempts to compare the FAR and the super area which cannot be practically done as the super area is inclusive of the FAR + area of balcony/veranda+ proportionate common areas, while the occupation certificate has been attained for FAR only. Further, he referred to clause 1.10 of agreement for the definition of 'covered area and clause 1.33 for definition of 'super area'. Thereafter, he stated that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016. Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

15. It has been submitted that the provision of Occupation Certificate is enshrined in Clause 4.10 of Chapter IV of the Haryana Building Code, 2017 and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he

submitted that perual of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code,2017, in accordance with several provisions. So, claim of complainants are misguided and erroneous. Further he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainants willfully, without consent accepted each and every terms of agreement. Now, at this stage they cannot preclude themself from abiding by the terms of agreement. The intent and purpose for which agreement was executed has to be given effect in case complainants do not want to come out of said agreement. He stated that the complainants have wrongly challenged the payment of dues with respect to the GST,VAT, delayed payment interest, club membership, cost escalation, holding charges and maintenance charges. Payments in regard to the same were mutually and voluntarily agreed between the complainants in different clauses of agreement. In support, he referred to para 11, 14 and 15 of judgement dated 19.11.2010 passed by Hon'ble Supreme Court in Civil Appeal No. 550,551,1611 of 2003 titled as DLF Universal Limited and Anr. Vs Director, Town and Country Planning Haryana and other.

G. ISSUES FOR ADJUDICATION

16. i. Whether the complainants are entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

ii. Whether offer of possession issued vide letter dated 06.12.2023 is valid or not?

iii. Whether demands raised along with alleged offer of possession are valid or not?

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. After hearing both the parties and considering the documents on records, Authority observes that upon booking, a unit bearing no. J-12-A-FF, admeasuring 876 sq. ft for a basic sale price of ₹ 16,08,003.12/- in the project of the respondent namely "Park Elite Floors" located at Faridabad, Haryana was originally allotted to complainants vide allotment letter dated 24.12.2009. Complainants alleges that respondent had promised to handover possession of the unit within a period of 24 months. However, respondent rather than offering possession within stipulated time had issued another letter dated 06.03.2014, vide which respondent had changed the unit of complainants from J-12-A-FF, admeasuring 876 sq.ft. and re-allotted unit bearing no. PE-304-FF, admeasuring 1371 sq.ft. in the same project of the respondent. Basic sale price for re-allotted unit was fixed at Rs. 1835.62/- per sq.ft. for 876 sq.ft i.e Rs. 16,08,003.12/- and Rs. 2425/- per sq.ft for increased area of 495 sq.ft i.e. Rs. 12,00,375/-. The respondent in its reply has averred that the re-allotment was done with the consent of the complainants. However,

the language of letter dated 06.03.2014 does not reflect the fair/ voluntary consent of complainant. On the contrary, the letter provides that "due to reasons beyond our reasonable control, we could not develop the unit booked i.e J-12A-FF by you". Further, letter also provided that the construction of re-allotment unit has already reached" completion of brick work stage". In such a scenario, when allottees have paid approx ₹ 5,52,046.35/- and had waited for 5 years for their unit, could have only consented to the re-allotment in order to save their investments and especially when he was given a hope that re-allotted unit would be completed soon as the construction has reached "completion of brick work stage". However, it is also a matter of fact that the unit re-allotted to complainants is of increased area and the complainants had accepted the same by making payments subsequent to the re-allotment of unit no. PE-304-FF.

On perusal of file, it is revealed that none of the parties have placed on record copy of builder buyer agreement executed between parties till date. Further, it is observed that vide order dated 13.02.2024, complainants have apprised the Authority that they are not having copy of builder agreement with them since same was withheld by respondent. Accordingly, respondent was directed to place on record copy of builder agreement within two weeks. On next hearing dated 23.04.2024, respondent alleged that copy of builder agreement had already been

delivered to complainant on 15.07.2023, but sought time to file its copy in registry. Thereafter, on 20.08.2024 respondent filed certain documents in compliance of order dated 13.02.2024. Perusal of said documents shows that respondent had placed on record documents with regard to one Mr. Sanjay Sarkar, who allegedly was an authorized/responsible person on behalf of complainants for purpose of collecting builder buyer agreement from respondent office. Further, it is revealed that signature on said documents is of person named "sandy". Respondent neither while arguing the case nor in the file has placed on record any document which establishes the relationship of Mr. Sarkar and present complainants, therefore, this plea of respondent cannot be relied upon. Nonetheless, respondent had failed to file actual copy of builder agreement in registry till date. Since both the parties have not placed on record copy of builder agreement signed between parties, in such circumstances, the only document which proves the allotment in favour of complainants is the allotment letter dated 06.03.2014. Hence, in present case rights of complainants are derived from said document dated **06.03.2014**.

18. Further, complainants in their pleadings have taken 24 months from date of initial allotment dated 24.12.2009 as deemed date of possession which works out to 24.12.2011. Whereas in relief clause at page no. 28 of complaint book, complainants are seeking delay interest w.e.f 06.03.2016(which is 24 months from date of re-allotment letter dated

06.03.2014). Respondent on the other hand, in its reply had taken plea that handing over of possession was subject to occurrence of force majure events.

Authority observes that in absence of builder buyer agreement and non-disclose of terms agreed between the parties at time of booking of the unit in question, it is not possible to derive actual date for handing over of possession of the unit to the complainants. Nevertheless, rights of the complainants are based upon the re-allotment letter dated 06.03.2014 only. Therefore, Authority deems appropriate to rely upon Judgment passed by Hon'ble Tribunal in **Appeal no 273 of 2019 titled as "TDI Infrastructure Ltd Vs Manju Arya"**, which further referred to observation of Hon'ble Apex Court passed in **STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in respect to ascertain the deemed date of possession. Above referred case provides that period of 3 years is considered to be a reasonable time for completion of construction work of the unit and handing over possession of the same to any allottee. Accordingly, taking a period of 3 years from the date of re-allotment i.e 06.03.2014 as a reasonable time to complete development works in the project and handover possession to the allottee-complainants, the deemed date of possession comes to **06.03.2017**.

Further, respondent in its reply has taken a plea that possession of unit was subject to occurrence of **force majure** conditions therefore, respondent has claimed relaxation for delay interest charges to be allowed to complainants for period which stands covered by force majeure conditions. In present case, due date of possession has worked out to be 06.03.2017 (as explained in preceding paragraphs of this order). There is a delay on the part of the respondent and respondent had attributed the same to the various reasons such as the NGT order dated 19.07.2016 banning construction, orders passed by Environment Authority etc. It is pertinent to mention that with regard to NGT order passed in year 2016, respondent had not annexed copy of said order nor has placed on record any fact w.r.t. ban on construction, thus, period alleged by respondent of 30 days as ban on construction cannot be verified. In absence of any relevant document it would not be just, to allow the claim of respondent seeking relaxation on account of construction ban. Further, the orders of Environment Authority dated 07.11.2017 as referred to by respondent, barring construction activities for 90 days pertains to a date subsequent to the due date for offer of possession. Therefore, respondent cannot be given benefit of such statutory orders that were issued after lapes of due date of possession.

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

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

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

Since, in the present case also the deemed date of possession had lapsed in the year 2017, respondent cannot be allowed taking advantage of an subsequent event of Covid-19 that further delayed the construction. Therefore, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

19. Further, respondent in its reply has also taken a plea that grace period be allowed to respondent since, occupation certificate for the unit in question was obtained on 09.11.2023 from concerned Authority.

With regard to grace period on account of obtaining occupation certificate, Authority observes that respondent had not relied upon any term or clause agreed between parties with regard to grace period to be granted to respondent under any circumstances. Since, in present case, there is no builder buyer agreement placed on record by any of the parties and no specific clause in the allotment letter was mentioned which entitles the respondent a grace period. Therefore, deemed date of possession has been worked out to be 06.03.2017, however, respondent had miserably failed to handover/ offer possession within stipulated time after obtaining occupation certificate from competent Authority. Further, respondent did not apply for grant of occupation certificate right after expiry of deemed date of possession i.e. 06.03.2017. Infact, it is a matter of fact that occupation certificate was received on 09.11.2023i.e. after delay of 6 years. Time period of 6 years taken by respondent to complete the construction work and receipt of occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondents to grant grace period is rejected.

20. Further, complainants are also aggrieved by the fact that when the respondent offered possession on 06.12.2023 i.e. during pendency of present case, same was accompanied by illegal demands, this makes said offer illegal and bad in eyes of law. Complainants have challenged these demands via filing rejoinder on 12.02.2024 in the registry of the Authority.

In this regard, Authority observes that once respondent has offered possession to complainants on 06.12.2023 i.e. after obtaining occupation certificate on 09.11.2023, it is a valid offer of possession in eyes of law Further, as per Section 19(10) of RERA Act 2016, it is the duty of the complainants to accept the said offer within 2 months of obtaining occupation certificate. Nevertheless, complainants have challenged the illegal demands raised alongwith said alleged offer of possession. Details of such objections raised by complainants are incorporated in para 12 of this order. Further, objections to each illegal demand raised by complainants are dealt with at length as under:-

i. Firstly, area of re-allotted unit was 1371 sq.ft, offer of possession has also been made for the same area i.e. 1371 sq.ft, **whereas final area approved in occupation certificate is lesser i.e. 1033 sq. ft:** Complainants have raised an objection with respect to difference in area as provided in offer of possession dated 16.12.2023 and occupation certificate dated 09.11.2023. Complainants have

alleged that respondent is in receipt of occupation certificate dated 09.11.2023, which provides that area of unit is 95.988 sq.mtrs or 1033 sq ft., whereas area of the unit as provided in offer of possession dated 06.12.2023 is 127.37 sq.mtrs or 1371 sq.ft. Therefore, complainants have requested that respondent be directed to charge only for the area approved in occupation certificate, i.e. 95.988 sq.mtrs or 1033 sq.ft.

To this, it is the argument of respondent is that neither in pleadings nor in relief sought, there is mention of such plea, therefore so any relief beyond pleadings cannot be awarded to complainants. Further, ld. counsel for respondent submitted that grant of occupation certificate is a technical process, being followed in consonance with provisions of Haryana Building Code and does not cover all area like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also. With regard to the objection of respondent that relief beyond pleadings cannot be awarded to complainants, 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 payment as per approved area is a part of legal demands which can be raised by

respondent. So, in essence demand for area whether approved or increased is a part of valid offer of possession. Hence, objection of respondent is rejected being devoid of merit.

Further, in respect of issue of difference in area as provided in offer of possession dated 06.12.2023, i.e. 1371 sq. ft and occupation certificate dated 09.11.2023, i.e. 1033 sq. ft. , Authority observes that respondent is entitled to charge only for the area of the unit which is actually provided to allotee at the time of handing over of possession. 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; but cannot be charged independently making it a chargeable component of unit. Hence, the plea of respondent deserves to be rejected and respondent is directed to re-calculate the price of area of unit, base of the unit area provided in occupation certificate i.e. 1033 sq. ft.

ii. Secondly, with regard to the **cost escalation charges of Rs 1,45,435.68/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 06.03.2017. The respondent issued a letter offering possession on 06.12.2023, despite the deemed date of possession being in 2017, resulting in an 7-year delay. Additionally, the offer 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 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 is solely attributed to the respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainants, having already endure 7-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 are hereby set aside.

iii. Thridly, with regard to the demand raised by the respondent on account of club charges, 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 for the unit has been obtained by the respondent on 09.11.2023. However, no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainants has explicitly stated at the time of arguments that the proposed club has not come into existence, with only a temporary club operational, if at all. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it in future as and when proper club will become operational at site.

iv. 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 06.03.2017 and charges/taxes applicable on said date are payable by complainant. Fact herein is

that GST came into force on 01.07.2017, i.e. subsequent to deemed date of possession. The delay in delivery of possession is the default on part of respondent/promoter and possession was offered on 06.12.2023 by that time GST had become applicable. No doubt the complainants have agreed to pay all the Government taxes, rates etc, but this liability shall be confined only up to the due date of possession. The delay in delivery of possession is the default on part of respondent/promoter and possession was offered on 06.12.2023 by that time GST had become applicable. However, it is a settled law that a person cannot take benefit of his own wrong/default. Therefore, the respondent is not entitled to charge GST from complainants as liability of GST has not become due up to the due date of possession.

v. Lastly, counsel for respondent has also stated that payment amounting to ₹ 94,327/- as timely payment discount and ₹ 88,440/- as inaugural discount were credited into complainants account by respondent as a good will gesture for making timely payments to respondent. He stated that said amount be deducted from the total paid amounts mentioned in account of complainants as said amount was never actually paid by complainants. In this regard, Authority deems appropriate to not allow deduction of above mentioned amount from the paid amounts of complainants for two fold

reasons. Firstly, complainants are not interested in withdrawing from the project and are 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 they had already paid more than the basic sale price to the respondent in the year 2009-2018 itself. Secondly, it is obvious that respondent had credited those amounts in complainants account for making payments on or before time. Since, complainants have performed their part and are taking the unit for which they had paid in advance to respondent for which certain benefits were credited by respondent to complainants account. Now, respondent cannot be allowed to take that amount back since complainants had completed their part of the agreement, however respondents have miserably failed to abide by terms of agreement.

21. Now, issue which remains to be adjudicated is delay interest. Respondent had offered valid possession of unit on 06.12.2023 which was not adhered by complainants for charging above stated illegal demands. It is important to refer to Section 19(10). Relevant portion is reproduced below:

"19(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."

As per above stated section, it is also the duty of the complainants to take possession within 2 months after receipt of occupation certificate, which in present case complainants have failed to take the same in specified time. Although respondent had also offered the valid possession after delay of around 7 years from deemed date of possession, i.e., 06.03.2017. Complainants herein are interested in having possession of their unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has made valid offer of possession to the complainants on 06.12.2023. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession (date of nomination), i.e., 06.03.2017 up to the date on which a valid offer is sent to them after receipt of occupation certificate, i.e., 06.12.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

22. 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. 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".

24. 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., 28.01.2025 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.

25. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.1% (9.1% + 2.00%) from the due date of possession i.e. 06.03.2017 to date of valid offer of possession, i.e. 06.12.2023.

26. Authority has got calculated the interest on total paid amount from due date of possession i.e. 06.03.2017 till the date of valid offer of possession i.e. 06.12.2023 which works out to Rs **20,32,249/-** as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession i.e. 06.03.2017 or date of payment whichever is later	Interest Accrued till 06.12.2023 (in ₹)
1.	24,35,136.28/-	06.03.2017	18,26,933/-
2.	3,19,214/-	21.02.2018	2,05,316/-
Total:			**20,32,249/-**

I. DIRECTIONS OF THE AUTHORITY

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

I. Respondent is directed to offer physical possession to complainants within 30 days and complainants are also directed to accept the same within next 30 days.

II. Respondent is directed to issue fresh statement of account in accordance with directions issued in para 20 of this order.

III. Respondent is directed to pay upfront delay interest as calculated in para 26 of this order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order. Further, respondents shall be liable to pay delay interest to complainant as per Section 2(za) of RERA Act,2016.

IV. Respondent is directed to get conveyance deed of unit of the 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 will inform the same to the complainant's alongwith letter of actual handing over of possession.

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

VI. The respondent will not charge anything from the complainants which is not part of the agreement to sell.

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

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CHANDER SHEKHAR
[MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]