HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1914 of 2022**
Date of filing.:	**10.08.2022**
First date of hearing.:	**18.10.2022**
Date of decision.:	**28.01.2025**

Ashwani Dhawan, S/o Sh. Wishwa Mitter Dhawan,
R/o-1928, Sector-49,
Faridabad- 121001
Also at- 215, Sector-21-C-, Faridabad, Haryana-121001

....COMPLAINANT

VERSUS

1. M/s BPTP Limited
   Through its Managing Director
   Having its registered office at:
   28 ECE HOUSE, 1st floor, KG Marg, New Delhi, 110001.
   Also at- OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad 121004, Haryana
2. M/s Countrywide Promoters Private Limited Through its Managing Director Having its registered office at: M-11, Middle Circle Connaught Circus New Delhi 110001

....RESPONDENT(S)

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

Present: - Sh. Arjun Kundra, Learned counsel for the complainant
Sh.Tejeshwar Singh, proxy counsel for both the respondents.

ORDER:

1. Present complaint has been filed on 10.08.2022 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit allotted	M2-23-GF, admeasuring 1203 Sq. Ft.(111.76 sq. mtr.)
5.	Date of Allotment	24.12.2009

	letter issued in favor of original allottees	
6.	Date of floor buyer agreement executed with original complainants	28.09.2010
7.	Possession clause in FBA (Clause 4.1)	**Clause 4.1** *Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of floor buyer agreement or on completion of payment of 35% of basic sale price along with 20% of EDC and IDC by the purchaser(s), whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice*

		of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).
8.	Due date of possession as per clause 4.1 of the said agreement	28.09.2012
9.	Total/Basic sale consideration	₹22,37,003/-
10.	Nomination letter issued in favour of present complainant i.e. Ashwani Dhawan	21.10.2013 with receipt of ₹ 26,30,333/-
11.	Total amount paid to respondent	₹29,91,941.10/-
12.	Offer of possession	19.09.2016; 13.03.2020
13.	Date of occupation certificate	12.01.2018
14.	Date of Termination letter	31.10.2020

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

3. That the original allottees namely Mr. Madan Behl and Mrs. Renu Behl were allotted unit bearing no. M2-23-GF, admeasuring 1203 sq.ft in the

respondent project, "Park Elite Floors", situated at Faridabad, vide allotment letter dated 24.12.2009. Thereafter, floor buyer agreement was executed between original allottees and respondents on 28.09.2010 for the said unit for basic sale consideration of ₹ 22,37,0003. It is submitted that as per clause 4.1 of the said agreement, respondents were under an obligation to handover possession by year 2012. However, respondents have not made any offer of possession within stipulated time.

4. That in the present case the complainant, who is a **Subsequent Allottee** derived his rights from the original allottees vide nomination letter dated 21.10.2013. Vide said nomination letter, respondents had substituted the name of present complainant along with record of receiving an amount of ₹ 26,30,333/ in respect to the unit in question. That, the basic sale price of the unit was fixed at ₹22,37,003/- out of which total amount of ₹ 29,91,941.10/- stands paid to respondents. Copies of payment receipts and statement of account dated 13.03.2020 are annexed at page no. 76-92 of the complaint book.

5. That the respondents instead of completing the project and obtaining the occupancy certificate, offered the possession of the unit to the present complainant on 19.09.2016 without obtaining occupation certificate with the intention to usurp the balance due installment. Complainant had raised several objection to the said alleged "offer of possession dated

19.09.2016, as same was accompanied by illegal and arbitrary demands which are discussed as follows:

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

ii. Unilateral and illegal enhancement in total sale price of the unit-from Rs. 22,37,003/- to Rs. 26,30,333/-.

iii. Levy of enhanced charges to ₹ 97,829.42/-

iv. Cost escalation- The reasons for the cost escalation- Rs. 73,779.99/- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.

v. unilateral area increase from 1203 sq.ft to 1379 sq.ft.

vi. Club Charges- Club has not been even constructed till date. The respondents cannot collect charges for the services which are non-existent till date.

vii. That there is no occupation certificate and completion certificate attached.

viii. That the present complainant challenges all the other arbitrary demands mentioned under various heads.

6. That the present complainant further stated that rather than solving above stated issues respondents have issued another letter as "offer of possession" dated 13.03.2020 annexed as Annexure C-6. In the said letter again it was not clarified by respondents whether occupation certificate for the unit in question was obtained by respondents or not? Further respondents again had unilaterally and illegally demanded amounts on different accounts.

7. That the respondents herein illegally, arbitrarily and unfairly cancelled the allotment of the complainant vide cancellation letter dated 31.10.2020. A copy of the cancellation letter dated 31.10.2020 has been annexed as Annexure-C-7. In response complainant wrote letters dated 25.11.2021; 03.02.2021; 06.07.2021 and 28.03.2022 (annexed as Annexure C-8) to respondents to look into his grievances, however no logical response was given by the respondents till date. Further, complainant stated in order to seek information regarding issuance of occupation certificate of the unit in question, he filed a RTI application on 01.07.2022 in the concerned department. The same was replied by the concerned department on 19.07.2022 stating that respondents have not obtained occupation certificate till date for the unit in question.

8. That the complainant has made all the payments on time but the respondents have miserably delayed the construction and development of

the project. Further, it is stated that the floor buyer agreement executed on 28.09.2010 has arbitrariness and unfairness which could clearly be derived from clause 6.1 and 4.3 which provides respondent to have right to terminate the agreement and forfeit the earnest money in case delay in payment of installments occurred and had right to accept the delayed installment with interest @ 18% p.a. Nonetheless, the possession of the residential floor has been due since September 2012, however till date the same has not been delivered. Further, from the date of nomination i.e. 21.10.2013 till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyer agreement. However, the respondents have miserably failed to complete the project even after a lapse of more than twelve years from due date of delivery of possession, and even as on date respondents are not in a position to offer possession of the booked unit to the complainant along with copy of occupation certificate.

9. Now, Complainant is aggrieved by the conduct of the respondents and inordinate delay in the completion of the project, therefore, approached to

this Authority. Hence the present complaint, seeking immediate handing over of possession of the unit in question along with the prescribe rate of interest on the paid amount as delayed penalty.

C. RELIEFS SOUGHT:-

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

    i. Direct the respondents to deliver immediate possession of the floor of the complainant i.e., M2-23-GF, BPTP Park Elite Floor, Parklands, Faridabad, Haryana admeasuring 1,379.00 sq ft. after due completion and receipt of occupancy/completion certificate along with all the promised amenities and facilities and to the satisfaction of the complainant after removal of deficiencies and defects; and

    ii. Direct the respondents to pay prescribed rate of interest as per the RERA Act, on the amount already paid by the complainant from the promised date of delivery, i.e., 28.09.2012 till the actual physical and legal delivery of possession after receipt of the occupancy certificate; and

    iii. Pass an order restraining the respondents from charging any amount from the complainant which do not form part of the floor buyer's agreement dated 28.09.2010 and/or illegal and arbitrary

including but not limited to enhanced charges, cost escalation charges, unilateral increase in basic sale price of the unit, delay penalty charges, GST charges, VAT charges, club membership charges, illegal maintenance charges, levy of holding charges etc. and whatsoever and or/ to direct respondents to refund/adjust any such charges which they have already received from the complainant.

iv. Pass an order to further quash/ set aside the alleged illegal offer of possession dated 19.09.2016, 13.03.2020 and to issue fresh offer of possession after due completion and receipt of all the certificates and all permissions along with all the promised amenities and facilities, as promised and charged for and to the full satisfaction of the complainant;

v. Pass an order to further quash/ set aside the alleged illegal termination and cancellation letter dated 31.10.2020 of the present unit and to further restore it in favour of the complainant.

vi. 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 RESPONDENTS:-

Learned counsel for the respondents filed a detailed reply on 05.06.2023 pleading therein as under:-

11. That one Mr. Madan Behl and Renu Behl approached respondent no.1 for allotment of residential floor in the project of respondent's namely "Park Elite Floors"at parklands, Faridabad, Haryana. Accordingly, vide booking form dated 14.06.2009, Mr. Madan Behl and Renu Behl i.e. original allottees booked a residential unit in respondent's project. Vide allotment letter dated 24.12.2009, unit bearing no. M2-23 GF (herein after referred as said unit), on ground floor admeasuring 1203 sq. ft in the project of respondent's namely "Park Elite Floors"at parklands, Faridabad was allotted. A copy of the allotment letter dated 24.12.2009 is annexed as Annexure R-2. The original allottees had executed floor buyer agreement on 28.09.2010 with respondents for the said unit. As per the Clause 4.1 read with clause 13 (force majeure events), the offer of possession was to be made within 24 months from the date of execution of agreement or on completion of payment of 35% of basic sale price along with 20% of EDC and IDC by the purchaser(s), whichever is later along with an additional grace period of 180 days.

12. Thereafter, original allottees had agreed to sell the unit in question to present complainant vide agreement dated 07.10.2013 and subsequently, present complainant i.e. Mr. Ashwani Dhawan become an allotee of the unit in question vide endorsement form dated 21.10.2013 along with receipt of paid amount of ₹ 26,30,333/-.

13. That the complainant consciously and willfully opted for construction linked plan for remittance of sale consideration of unit. Accordingly, demand was raised on 11.07.2016 on achievement of landmark of "ON COMPLETION OF FLOORING". Said demand was duly paid by the complainant vide receipt dated 03.09.2016. Further, on 19.09.2016, respondent no.1 issued the offer of possession to complainant but complainant did not come forward to take the same. Thereafter, many reminders were issued by respondents on 26.06.2017, 04.10.2017, 11.12.2017, 20.02.2018, 09.04.2018 and final demands on 04.07.2018, 24.08.2018. When none of the demand letters or reminders were replied by complainant, respondent issued first termination letter dated 19.11.2018. Again awarding opportunity to complainant respondent issued another final demand notice on 29.04.2019 but same was again not replied by complainant. Having no option respondents again terminated the unit on 17.08.2019. Again respondents issued one last recovery notice to complainant on 13.03.2020, when same was not replied. Finally, on 31.10.2020 respondents had issued last termination letter to complainant. That the complainant has failed to fulfil its obligations to pay the balance sale consideration of the said unit to the respondent. Hence, now the complainant has no locus to file the present complaint under reply against the respondent. Hence, the relief sought by the complainant is not tenable

in the eyes of law and the complaint is liable to be rejected on this ground alone.

14. That since the execution of the floor buyer agreement till date, a number of circumstances beyond the control of the respondents, including but not limited to delay in payment by the complainant, force majeure events have unfolded that have affected the rights and obligations of the respondents under the floor buyer agreement and in light of the same, the present complaint cannot be sustained.

15. That the project "Park Elite Floors" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, the respondent had to encourage additional incentives like 'timely payment discounts' of Rs 85,882.33/- in the present case. While on the other hand, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the respondent such as ban on construction by the Hon'ble Supreme Court of India in the case titled as "**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, series of lockdowns have been faced by the citizens of India including the Complainant and Respondent's herein. Otherwise, construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.

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

E. APPLICATION FILED BY RESPONDENT ON 20.08.2024:

17. That the respondent had filed an application under Section 151 of CPC placing on record copy of occupation certificate dated 12.01.2018 and statement of account issued for unit in question dated 23.04.2024. Copy of both the documents are annexed as Annexure- A and B of the application.

F. ARGUMENTS OF COUNSELS FOR COMPLAINANT AND RESPONDENTS:-

18. Ld. counsel for complainant reiterated his submissions as stated in para 3-10 of this order and pressed upon the relief of setting aside the termination letters issued by respondent and to handover possession of booked unit alongwith delay interest. He argued that complainant has already made payment of Rs 29,91,941.10/- till year 2016 which is more than the basic sale price of Rs 22,37,300/. Thus, demands raised by respondents in the year 2018 were not genuine, specifically keeping in view the fact that respondent had delayed the construction of project beyond reasonable time of 3-4 years. Hence, complainant choose not to honour said demand letters. In respect of offer of possession issued on 19.09.2016 and 13.03.2020, said offers were illegal since none of them was accompanied with copy of occupation certificate and respondents have raised various illegal demands. Further, he submitted that respondents have never informed complainant about status of occupation certificate even though complainant had raised his objection vide emails dated 25.11.2021, 03.02.2021, 06.07.2021, 28.03.2022. It is only compliance of last order dated 20.08.2024 that respondent vide application dated 20.08.2024 had placed on record copy of occupation certificate obtained on 12.01.2018 along with copy of statement of account. Further with regard to cancellation letters issued on 19.11.2018;

17.08.2019 and 31.10.2020 by respondents, counsel for complainant stated that all said termination letters were challenged by complainant vide its above mentioned letters of year 2021 and 2022, however respondents never replied to any of the grievances of the complainant. Even if cancellation letters issued by respondents since year 2018,2019 and 2020 are considered valid, then also respondents have not issued refund of the paid amount to the complainant till date. Therefore, he requested that respondent be directed to issue fresh offer of possession along with delay interest.

19. Ld. counsel for respondents stated that respondents have raised various demand letters dated 26.06.2017, 11.12.2017, 20.02.2018, 09.04.2018, 04.07.2018, and 24.08.2018 in consonance with the construction linked plan opted by complainant. Out of goodwill, respondent still offered possession of the unit to the complainant on 19.09.2016 and 13.03.2020. However complainant still chose to remain silent about payment of outstanding dues amount. Pursuance to which, first termination letter was issued to complainant on 19.11.2018. However, respondents, in order to again wake up the complainant issued second termination letter dated 17.08.2019. Complainant himself is at fault by not coming forward to accept possession and to make payment of outstanding amount. Respondents rightfully terminated the unit of the complainant on 31.10.2020 as provided in Clause 6.1 of agreement. He read Clause 6 of

the agreement for sale during the course of arguments to press upon the fact that in case complainant /allotee fails to pay due amount within 45 days then respondent is at liberty to terminate the allotment of unit after forfeiture of earnest money. He argued that at this belated stage complainant cannot seek relief of possession, the relief admissible is only refund of amount that too after forfeiture of earnest money. He further argued that complainant in this case is seeking relief in terms of specific performance even without performing his own part of agreement, i.e., honoring of demand letters issued by respondent. Learned counsel for respondents referred to the judgment of Hon'ble Supreme Court in case titled as '**Bharati Knitting Co. Vs DHL Worldwide Express Courier Division**' 1996 SCC (4) 704, wherein Hon'ble Apex Court has observed that when there is a specific term in the contract, parties are bound by the term in the contract.

G. ISSUES FOR ADJUDICATION

20. i. Whether offer of possession issued vide letters dated 19.09.2016 and 13.03.2020 valid or not?

ii. Whether termination/cancellation letter issued by respondent is valid or not?

iii. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

iv. Whether demands raised along with offer of possessions certain demands are valid or not?

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

21. **Findings on the objections raised by the respondents with regard to execution of floor 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, 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, 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 flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already

dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

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

Further, in present case, respondents had only placed on record copy of occupation certificate dated 12.01.2018 obtained with respect to unit in question. There is nothing on record that proves that completion certificate has been obtained by the respondent. Therefore, as per Section 3(1) of the RERA Act, 2016 this project of the respondent is an ongoing project and as per recent judgment of Hon'ble Supreme court in **"Newtech Promoters and Developers Pvt. Ltd"** Civil Appeal no. 6745-6749 of 2021 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.

22. After hearing both parties and going through records, Authority observes that upon booking, a unit bearing no. M2-23-GF, admeasuring 1203 sq. ft in the respondents project "Park Elite Floors" situated in Parklands, Faridabad was allotted to original allottees namely Mr. Madan Behl and Mrs. Renu Behl, vide allotment letter dated 24.12.2009. A floor buyer agreement was executed between original allottees and respondents on 28.09.2010 for above stated unit for basic sale price of ₹22,37,003/-. As per clause 4.1 of the said agreement possession of the unit was supposed to be delivered within 24 months from execution of floor buyer agreement or on completion of payment of 35% of basic sale price along with 20% of EDC and IDC by the purchaser(s), whichever is later alongwith grace period of 180 days for applying for occupation certificate.

The said unit was transferred in the name of present complainant vide endorsement dated 21.10.2013 along with receipt of paid amount of

₹ 26,30,333/-. In present case, complainant had stepped into the shoes of original allotteess vide nomination or endorsement form dated 21.10.2013 which is subsequent to floor buyer agreement dated 28.09.2010.

Factual matrix of the case reveals that respondents as per clause 4.1 of the agreement were under an obligation to handover possession of the unit in question within 24 months from the date of execution of agreement or on completion of payment of 35% of basic sale price alonwgith 20% of EDC/IDC to the complainant whichever is later along with an additional grace period of 180 days.

It is relevant to comment that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoters is just to evade the liability towards timely delivery of unit and to deprive the allotee of his right accruing after delay in delivery possession. So, taking 24 months from date of agreement, the deemed date of possession work out to 28.09.2012.

Further with regard to grace period on account of obtaining occupation certificate is concerned, Authority observes that respondents were duty bound to complete the construction within 24 months from execution of agreement, i.e., by 28.09.2012, thereafter time period of 180 days was provided for applying for occupation certificate. Here in the present case, respondents did not abide by the terms of agreement and

failed to complete construction within stipulated time, also they did not apply for grant of occupation certificate within 180 days from the due date of possession i.e. 28.09.2012. Moreover, it is a matter of fact that occupation certificate was received on 12.01.2018 i.e. after a period of 6 years from the due date for handing over of possession. Thus, the grace of 180 days to be granted after due date of possession in floor buyer agreement could have been started from 28.09.2012 which got extended by another 6 years. Time period of 6 years taken by respondents to complete the construction work and receipt of occupation certificate is not a reasonable duration. Respondents herein are claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondents to grant 180 days grace period is rejected.

23. Accordingly, respondents should have delivered possession of the unit latest by 28.09.2012, however same has not been delivered within the time stipulated in agreement. Nevertheless, fact remains that present complainant who is a subsequent allottee was transferred the unit in question vide nomination dated 21.10.2013 along with receipt of amount of ₹ ₹26,30,333/-. No fresh agreement for sale was signed/executed between present complainant and respondents, therefore, complainant and respondents shall remain bound by terms of agreement executed on

28.09.2010 visa viz- unit in question. Present complainant had paid an total amount of ₹29,91,941.10/- to respondents from year 2013-2016. Copies of payment receipts and statement of account dated 13.03.2020 are annexed at page no. 76-92 of the complaint book.

Further, fact remains that present complainant admittedly and knowingly had stepped into the shoes of original allottee on 21.10.2013, which indeed is the time after passing of deemed date of possession as per agreement executed i.e. on 28.09.2012. Meaning thereby, present complainant had adequate knowledge that respondents once had failed in delivering the possession on promised time but expecting that subsequent allottee will have knowledge that delay of respondent would continue indefinitely, based on prior assumption would not be justified. Therefore, in light of judgment passed by Hon'ble supreme court in Civil Appeal No. 7042 of 2019 titled as **M/s Laureate Buildwell Pvt. Ltd. Versus Charanjeet Singh**, the Authority holds that in cases where subsequent allottee had stepped into shoes of original allottee after expiry of due date of possession and before coming into force of RERA Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into shoes of original allotte, which in present case is nomination letter dated 21.10.2013.

24. Further, respondents have claimed relaxation for delay interest charges to be allowed to complainant for certain period which stands covered by force majeure conditions. In present case, due date of possession has worked out to be 28.09.2012 and complainant stepped into the shoes of original allottees on 21.10.2013. Respondents have admitted that there is a delay on the part of the respondents, however they have attributed the same to the various reasons such as the NGT order dated 19.07.2016 banning construction activity, 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. Also, such order of NGT of 2016 as relied upon by respondents was prime facie a subsequent event to the date on which present complainant stepped into the shoes of original allottees. 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 and also the date of nomination in favour of present complainant. Therefore, respondent cannot be given benefit of

such statutory orders that were issued after lapse of due date of possession.

Further, 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 2012 and present complainant stepped into the shoes of original allottee on 21.10.2013, respondents cannot be allowed taking

advantage of an subsequent event of Covid-19 that further delayed the construction. Therefore, 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.

25. In view of above, it is concluded that respondents have delayed the possession of unit in question as it could not be completed within the stipulated time as per floor buyer agreement. Respondents in their reply has admitted the fact that occupation certificate for unit in question was obtained by respondents on 12.01.2018, where as respondents have offered the possession to present complainant on 19.09.2016. The chronology of offering possession by respondent on 19.09.2016 shows that said alleged offer of possession was before receiving occupation certificate for the unit in question, which makes the said offer illegal/invalid and bad in the eyes of law. Furthermore, respondent had annexed various demand letters issued after issuance of first offer of possession, which were not complied with by complainant, therefore respondents have terminated the unit in question on 19.11.2018. Thereafter, respondent again issued another demand notice on 29.04.2019, when same was also not replied, consequently respondent again terminated the unit on 17.08.2019. Subsequently thereupon respondent issued recovery letter dated 13.03.2020, annexed at page no 118-119 of reply, titled as "offer of possession"(which is after obtaining

occupation certificate i.e. 12.01.2018). Respondents have stated that complainant never came forward to take possession and pay outstanding dues, therefore, having no other option respondents had finally cancelled the unit on 31.10.2020 under clause 6.1 of agreement that provide for termination of unit after forfeiture of earnest money. Complainant on the other hand, stated that both the letters of offer of possession dated 19.09.2016 and 13.03.2020 were challenged by the complainant on the ground that same were not accompanied with occupation certificate and respondents have raised various illegal demands with said offer of possessions. Complainant also alleged that more than 90 % of the total sale consideration stands paid to the respondent in the year 2016, any demand letters issued after year 2016 cannot be said to be in consonance to the construction link plan opted by the complainant. Therefore, respondents be directed to issue fresh offer of possession along with copy of occupation certificate and termination letters issued by respondents be set aside.

In this regard, it is pertinent to mention that offer of possession dated 19.09.2016 is invalid as same was before obtaining occupation certificate. However, second offer of possession made on 13.03.2020 is a valid offer of possession since same was made after receiving of occupation certificate dated 12.01.2018. Further, issue herein arises is that respondents revoked the allotment of unit exercising its rights as per

clause 6.1 by terminating the unit on 31.10.2020. Nonetheless, respondents neither refunded the money to complainant after cancellation nor forfeiture the earnest money till date. Although, respondents should have acted pro-actively in deducting earnest money out of total paid amount and refunded the remaining amount to complainant in the year 2018 or year 2020 itself. But fact is that paid amount still lies with respondents. In these circumstances, it is established that respondents chose to remain silent over its own obligation, i.e., to refund amount after forfeiture of earnest money from year 2018 to till date. Keeping in view the aforesaid discussion, the termination letters issued by respondents are declared illegal and are therefore set-aside.

26. That, it is established that even after receiving more than 90 % of the paid amount, respondents have delayed the possession and offered the same on 13.03.2020 after obtaining occupation certificate, which makes the said offer valid. Accordingly, complainant is also under an obligation under Section 19(10) of RERA Act 2016, to accept the said offer within two months after obtaining occupation certificate. Nonetheless, complainant had challenged various demands raised by respondents along with offer of possession dated 13.03.2020 which are being dealt under following heads:

a. Firstly, with regard to the **increase in area from 1203 sq. ft or 111.76 sq. mtr to 1379 sq. ft. at the time of offer of possession dated**

13.03.2020 and then final area approved in occupation certificate is 101.196 sq. mtrs, Authority is of the view that respondents have issued two offer of possession firstly on 19.09.2016 wherein area is unilaterally increased from 1203 sq.ft to 1379 sq.ft. Said offer of possession has already been declared invalid in preceding paragraph of this order, hence hold no sanity. In second and valid offer of possession dated 13.03.2020 respondents have not mentioned the area for the unit in question. In occupancy certificate obtained by respondents area of the unit is mentioned as 101.196 sq.mtrs. Therefore, respondents shall charge from complainant only for the final area of 101.196 sq. mtrs

b. Secondly, with regard to the **cost escalation charges of Rs 73,779/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 21.10.2013. The respondents issued a letter offering possession on 13.03.2020 to complainant, despite the deemed date of possession being in 2013, resulting in delay of 7 years. Additionally, the offer was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondents also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when

there are unforeseen increases in construction costs, but in this case, the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endure 7 years 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 respondents on account of cost escalation charges shall be set aside.

c. Thirdly, with regard to the demand raised by the respondents 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 (OC)** for the unit has been obtained by the respondent on 12.01.2018. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainant has explicitly stated at 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, respondents will become entitled to recover it in future as and when proper club will become operational at site.

d. Further, complainant has raised an objection that respondents are levying enhanced charges of ₹ 97,829.42/-. In this regard, it is observed that it is the respondents who delayed the project, therefore, no such unilateral charges will be imposed upon complainant.

e. Lastly, Counsel for respondents have also stated that payment amounting to ₹ 85,882.33/- as timely payment discount were credited into complainant account by respondents as a good will gesture for making timely payments to respondents. He stated that said amount be deducted from the total paid amounts mentioned in account of complainant as said amount was never actually paid by complainant. In this regard, Authority deems appropriate to not allow deduction of above mentioned amount from the paid amounts of complainant for two fold reasons. Firstly, complainant is not interested in withdrawing from the project and is willing to continue and wait till project gets completed, meaning thereby, complainant is sticking to their decision and showing their willingness to have the booked unit for which they had already paid more than the basic sale price to the respondent in the year 2013-2016 itself. Secondly, it is obvious that respondents have

credited those amounts in complainant account for making payments on or before time. Since, complainant has performed her part and is taking the unit for which she had paid in advance to respondents for which certain benefits were credited by respondents to complainant account. Now, respondents cannot be allowed to take that amount back since complainant had completed their part of the agreement, however respondents have miserably failed to abide by terms of agreement.

27. Now, issue which remains to be adjudicated is delay interest. Respondents have offered valid possession of unit on 13.03.2020 which was not adhered by complainant for charging above stated illegal demands and for non- presence of document of occupation certificate along with it. 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 complainant to take possession within two months after receipt of occupation certificate, which in present case complainant had failed to take the same in specified time. Although respondents have also offered the valid possession after delay of around 8 years from deemed date of possession. Complainant

herein are interested in having possession of their unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondents in this case has made valid offer of possession to the complainants on 13.03.2020. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the date of nomination (when right accrues in favour of present complainant), i.e., 21.10.2013 up to the date on which a valid offer is sent to him after receipt of occupation certificate, i.e., 13.03.2020. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

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

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

.....

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

29. 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;

30. 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".

31. 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%.

32. 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. 21.10.2013 till 13.03.2020 i.e date of valid offer of possession.

33. Authority has got calculated the interest on total paid amount from due date of possession i.e. 21.10.2013 till 13.03.2020, which works out to Rs **20,07,368/-** as per detail given in the table below:

Complainant claims to have paid an amount of Rs 29,91,941.10/- at page no. 37 of complaint. In support receipts of Rs 26,33,980.77/- has been annexed in complaint file as Annexure C-4 from page no. 77-92 of complaint book. However statement of account dated 13.03.2020 annexed at page no. 76 of complaint, shows that amount of ₹ 29,91,941.10/- stands received by respondents. Accordingly, an amount of Rs 26,33,980.77/- is taken from receipts annexed in complaint file and remaining/differential amount of Rs 10,270.33/- is taken from statement of account dated 13.03.2020. However, date of payment of ₹ 10,270.33/- falls on the same date on which valid offer of possession was made to complainant; therefore, this amount is not taken into consideration for purpose of calculating delay interest charges.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession i.e. 21.10.2013 or date of payment whichever is later	Interest Accrued till 13.03.2020 (in ₹)
1.	26,33,980.77/-	21.10.2013	18,71,180/-
2.	3,47,690/-	03.09.2016	1,36,188/-
Total:	**29,81,670.77/-**		**20,07,368/-**

F. DIRECTIONS OF THE AUTHORITY

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

II. Respondents are directed to issue fresh statement of account in accordance with directions issued in para 26 of this order.

III. Respondents are directed to pay upfront delay interest as calculated in para 33 of this order to the complainant towards delay already caused in handing over the possession within 90 days from the date of

uploading of the order. Further, respondents shall be liable to pay delay interest to complainant as per Section 2(za) of RERA Act,2016.

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

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

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

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

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CHANDER SHEKHAR
[MEMBER]

.....
DR. GEETA RATHEE SINGH
[MEMBER]