HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2404 of 2022**
Date of filing.:	**15.09.2022**
First date of hearing.:	**08.02.2023**
Date of decision.:	**11.02.2025**

Sanjay Sharma, S/o Sh. R.P Sharma,
R/o- WZ- 128, Basai Dara Pur
Moti Nagar, New Delhi-110015

....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 through VC
None for both the respondents.

ORDER:

1. Present complaint has been filed on 15.09.2022 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	E-24-06, 2nd floor, admeasuring 1203 Sq. Ft.(111.808 sq. mtr.)
5.	Date of Allotment	24.12.2009
6.	Date of floor buyer	03.06.2010

	agreement	
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 sanctioning of building plan. 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	09.09.2012
9.	Total/Basic sale consideration	₹21,37,003/-
10.	Total amount paid to respondents	₹24,40,381.03/-
11.	Offer of possession	16.08.2018
12.	Date of occupation certificate	07.06.2022
13.	Date of Termination letter	17.08.2019; 30.08.2022

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

3. That upon making booking application, allotment was made by respondents in name of complainant. Vide allotment letter dated 24.12.2009, complainant was allotted unit bearing no. E-24-06-SF, admeasuring 1203 sq.ft in the respondent project, "Park Elite Floors", situated at Faridabad. After few months, complainant and respondents entered into floor buyer agreement dated 03.06.2010 for the above stated unit for basic sale price of ₹ 21,37,003/- against which complainant had paid in total an amount of ₹ 24,40,381.03/-. Copies of payment receipts and statement of account dated 30.08.2022 are annexed at page no. 69-84

of the complaint book. As per clause 4.1 of the said agreement, respondents were under an obligation to handover possession within 24 months from date of sanctioning of building plans along with 180 days of grace period. It is submitted that respondents had raised the demand on account of "start of construction" on 09.09.2010, which gives the idea that building plans ought to have been approved before this stage, thus, it could be safely assumed that handing over of possession by respondents within 24 months be taken from 09.09.2010 and accordingly, deemed date comes to 09.09.2012. However, respondents have not made any offer of possession within stipulated time. Copy of demand letter dated 09.09.2010 has been annexed as Annexure C-4.

4. That the respondents instead of completing the project and obtaining the occupancy certificate, offered the possession of the unit to the present complainant on 16.08.2018 without obtaining occupation certificate. Complainant had objected to the said alleged "offer of possession dated 16.08.2018, 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 complainant was given in the statement of account issued with offer of possession. The complainant is 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. 21,37,003/- to Rs. 25,43,738.41/-.

iii. Cost escalation- Complainant was being called out to make payment of escalation charges which was illegal.

iv. Unilateral area increased from 1203 sq.ft to 1371 sq.ft.

v. Pre-typed- "indemnity and undertaking" aw sought by respodents.

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

5. Respondents rather than solving above stated issues have illegally, arbitrarily and unfairly cancelled the allotment of the complainant vide cancellation letter dated 30.08.2022, whereas complainant had already paid more than the basic sale price of the unit in question. A copy of the cancellation letter dated 30.08.2022 has been annexed as Annexure-C-8. Prior to the cancellation, complainant had issued various legal notices to respondents dated 22.08.2018; 10.09.2018; 17.09.2018; 31.10.2018; 30.11.2018 (annexed as Annexure C-7) to respondents to look into his grievances, however no logical response was given by the respondents till date.

6. 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 03.06.2010 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, 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.

7. 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:-

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

i. Direct the respondents to hold termination/cancellation letter dated 30.08.2022 as illegal, arbitrary under law and further pass an order revoking and cancelling the same; and

ii. Direct the respondents to restore the allotment of unit of the complainant i.e. Unit No. E-24-06-SF in project "park elite floors, Parklands, Faridabad.

iii. Direct the respondents to deliver immediate legal possession of the floor of the complainant i.e., E-24-06-SF, BPTP Park Elite Floor, Parklands, Faridabad, Haryana admeasuring 1,371.00 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

iv. Direct respondents to terminate the " offer of possession" dated 16.08.2018 as illegal and direct respondents to issue fresh offer of possession in terms of floor buyer agreement dated 03.06.2010 after due receipt of occupancy certificate;

v. 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., 09.09.2012 till the actual physical and legal delivery of possession after receipt of the occupancy certificate; and

vi. 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 03.06.2010 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.

vii. 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 28.05.2024 pleading therein as under:-

11. That present complaint pertains to real estate project known under the name and style of "Park Elite Floors" for which respondent No.1 is a developer and respondent No.2 is a mere confirming Party. Neither the Respondent No. 2 is a necessary party nor a proper party to the present case and no relief has been claimed from the respondent No. 2 and hence, its name should be deleted from the array of parties.

12. That complainant vide booking application form dated 25.05.2009, had applied for booking of unit in respondent's project namely, "Park Elite Floors" at parklands, Faridabad, Haryana. Vide allotment letter dated 24.12.2009, complainant was allotted unit no. E-24-06-SF admeasuring tentatively 1203 sq.ft. in respondent above stated project. Subsequently, floor buyer agreement was executed between parties on 03.06.2010. A copy of the allotment letter dated 24.12.2009 is annexed as Annexure R-2 and copy of floor buyer agreement is annexed as Annexure R-3. Moreover, complainant on 27.05.2010 executed indemnity cum undertakings, indemnifying the respondents. On the basis of the undertaking dated 27.05.2010, complainant had waived their right, if any, to seek delay possession charges. A copy of the undertaking dated 27.05.2010 is annexed as Annexure R-4(colly).

As per the clause 4.1 read with clause 13 (force majeure events) of the buyer's agreement, the offer of possession was to be made within 24

months from the date of sanctioning of building plan along with an additional grace period of 180 days. In present case, building plan was compounded on 07.06.2022 and hence, due date to be calculated from said date, which comes out to be 07.12.2024. Hence, stage of offer of possession has not yet passed and present complaint is pre-mature and liable to be dismissed.

13. 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.

14. 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'. 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.

15. That the due date of offer of possession was also dependent on timely payment by the complainant. The complainant consciously and willfully opted for construction linked plan for remittance of sale consideration of unit. Accordingly, respondents had sent reminder notices dated 06.10.2018, 16.11.2018; 18.12.2018; 11.02.2019; 29.04.2019 to the complainant thereby asking the complainant to clear the outstanding dues against the payment request, however, complainant had failed to do so. Consequently, respondent no.1 issued termination letter dated 17.08.2019

to complainant on account of non-payment of pending dues. A copy of reminder notices and termination letter are annexed as Annexure R-5(Colly) and R-8. Moreover, the cancellation of unit is not only valid from clauses of agreement executed between parties but also from the model RERA Agreement clause 9.3 which provides that in case default occurred on part of allottee, respondent can forfeiture the interest on delayed payments upon cancellation of unit. Since, the complainant has failed to fulfill its obligations to pay the balance sale consideration of the said unit to the respondent and unit stands terminated. Now, the complainant has no locus to file the present complaint.

16. That despite number of defaults on part of complainant, respondent no.1 infused funds into the project and developed the same. Respondent no.1 applied for occupation certificate on 28.11.2018 and obtained the same on 07.06.2022. Respondent stated that once an application for the grant of occupation certificate is submitted for approval in office of concerned authority, respondent have no control over the same. It is pertinent to mention that competent authority was bound to revert within 60 days in terms of Code 4.10(4) of Haryana Building Code, 2017, however after waiting for prescribed time for approval, the respondent no.1 offered possession to complainant on 16.08.2018. A copy of offer of possession dated 16.08.2018 is annexed as Annexure R-7.

17. 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. REJOINDER FILED BY COMPLAINANT ON 20.06.2024 RAISING ADDITIONAL ISSUES:

18. That respondents received occupation certificate on 07.06.2022 and had issued an offer of possession dated 16.08.2018. It is the submission of complainant that said offer of possession is illegal because same was not accompanied with occupation certificate and there is no mention of delay interest on account of delay caused in offering the possession. Further, same is accompanied with illegal demands. Further, as per the floor buyer agreement dated 03.06.2010, the super built up area of the present unit/floor was 1203 sq.ft. The alleged offer of possession dated 06.08.2018 mentions the super built up area of the present unit/floor increased to 1371sq ft, where, in the occupation certificate dated 07.06.2022, the area of the unit mentioned is only 1087 sq.ft or 101.003 sq.mtrs. This clearly proves discrepancies in the alleged occupation certificate and offer of possession, statement of receivables and payables. therefore, the offer of possession dated 16.08.2018 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.

19. Few of the concerns of the complainant 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 complainant is entitled to prescribed rate of interest as per the Act for the period of delay.

ii. The complainant is 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. 21,36,337.56/- as per the Statement of Account dated 02.09.2017 (Pg. no. 84 of the complaint) and now illegally enhanced to Rs. 25,43,738.41/-.

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. 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 ₹ 50,000/- 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 16.08.2013 is null and void.

vii. Illegal undertaking/indemnity attached with the alleged offer of possession (page- 92-95 of reply).

viii. GST has been wrongly imposed on the complainant.

F. ARGUMENTS OF COUNSELS FOR COMPLAINANT AND RESPONDENTS:-

20. Ld. counsel for complainant reiterated his submissions as stated in para 3-8 of this order and pressed upon the relief of setting aside the termination letter issued by respondent and to handover possession of booked unit alongwith delay interest. He argued that complainant has already made payment of Rs 24,40,381.03/- between years 2009-2018, which is more than the basic sale price of Rs 21,37,003/. Further as per payment plan opted by complainant and clause 4.1 of agreement respondent was under an obligation to complete the unit by year 2012. 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 period. In respect of offer of possession issued on 16.08.2018, said offer was illegal since same without obtaining occupation certificate and accompanied by various illegal demands. Further, he submitted that respondents have never informed complainant

about status of occupation certificate even though complainant had raised his objection and sent legal notices dated 22.08.2018, 10.09.2018, 17.09.2018, 31.10.2018, 30.11.2018. Further with regard to cancellation letter issued on 30.08.2022 by respondents, counsel for complainant stated that 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.

21. Ld. counsel for respondents stated that respondents have raised various demand letters dated 07.04.2017, 09.06.2017, 04.08.2017, 10.04.2018 in consonance with the construction linked plan opted by complainant. Out of goodwill, respondent still offered possession of the unit to the complainant on 16.08.2018. However complainant still chose to remain silent about payment of outstanding dues amount. Pursuance to which, respondent issued termination letter to complainant on 17.08.2019. However, 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 17.08.2019 as provided in Clause 11.1 and 11.2 of agreement. 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

22. i. Whether offer of possession issued vide letter dated 16.08.2018 valid or not?

ii. Whether demands raised along with offer of possession certain demands are valid or not?

iii. Whether termination/cancellation letter dated 17.08.2019 and 30.08.2022 issued by respondents are valid or not?

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

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

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

Respondent no. 1 in its written reply has stated that present complaint pertains to an independent floor bearing no. E-24-06, in the real estate Project "Park Elite Floors" being developed by the Respondent No. 1.

The Respondent No. 2 is a mere confirming party to the Agreement. Neither the Respondent No. 2 is a necessary party nor a proper party to the present case and no relief has been claimed from the Respondent No. 2 and hence, its name should be deleted from the array of parties. Perusal of file reveals that complainant had paid all amount/carried out transaction with respondent no. 1 only, nevertheless. As per the agreement the confirming party i.e. respondent no.2 have certain rights in the parcel of land on which the unit of complainant is situated. Further, as per clause 4.1 of the agreement, respondent no.2/ confirming party along with respondent no.1 agreed to handover possession as per time stipulated in the agreement, meaning thereby respondent no.2 was necessary party to the agreement. Therefore, plea taken by respondent no.1 that name of respondent no.2 be deleted from array of parties cannot be accepted.

H.II 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 07.06.2022 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.

H.III Objection raised by the respondents to the claim of delay interest of complainant after execution of affidavit cum undertaking dated 27.05.2010.

Respondents have also taken an objection that complainant at the time of purchasing unit has conducted due diligence to their satisfaction and was acquainted with the terms and condition so the application form for allotment of floor buyer agreement prior to signing the same and subsequent undertaking their signatures on the same, complainant is bound by each clause of said form including clause 4. Now, respondents states that relief of delay interest being claimed by complainant is beyond the terms of application form or floor buyer agreement as same was given up by complainant vide undertaking dated 27.05.2010, therefore the Authority lacks the jurisdiction to decide the delay interest.

To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan**. Operative part of the said judgment is being reproduced below:

> *Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words : "'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.*
>
> *In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors., 4 this Court held that :*
>
> *"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted*

to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.

It applies where both parties are businessmen and the contract is a commercial transaction. ... ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated

08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.

In this case, respondent promoters and complainant was not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of undertaking to get the booed unit. Said application form and undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainant with such one-sided terms.

23. After hearing both parties and going through records, Authority observes that upon booking, a unit bearing no. E-24-06, tentatively admeasuring 1203 sq. ft in the respondents project "Park Elite Floors" situated in Parklands, Faridabad was allotted to complainant, vide allotment letter dated 24.12.2009. A floor buyer agreement was executed between complainant and respondents on 03.06.2010 for above stated unit for basic sale price of ₹21,37,003/-. As per clause 4.1 of the said agreement possession of the unit was supposed to be delivered within 24 months

from sanctioning of building plan alongwith grace period of 180 days for applying for occupation certificate.

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 sanctioning of building plan, which as per respondent reply was compounded on 07.06.2022. However, vide last order dated 03.09.2024, respondents counsel apprised the Authority that on 07.06.2022 building plans were only revised.

It is pertinent to mention that demand letter raised by respondent on account of "start of construction" i.e. on 09.09.2010, makes it clear/evident that respondents must have taken the sanctioning of building plan from concerned authority prior to issuance of this demand letter. Although, both the parties have not specified the exact date of sanctioning of plan, in that case, it will be appropriate to take 24 months from date of demand raised on account of start of construction i.e. 09.09.2010. So, taking 24 months from date of start of construction, the deemed date of possession work out to 09.09.2012.

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 the date of start of construction, i.e., by 09.09.2012, 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. 09.09.2012. Moreover, it is a matter of fact that occupation certificate was received on 07.06.2022 i.e. after a period of 10 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 09.09.2012 which got extended by another 10 years. Time period of 10 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.

24. It is observed that respondents should have delivered possession of the unit latest by 09.09.2012, however same was not been delivered within the time stipulated in agreement. Complainant had paid an total amount of ₹24,40,381.03/- to respondents between the year 2009-2018.

25. 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 09.09.2012. 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 on record 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 to deemed date of possession. In absence of any relevant document it would not be just, to allow the claim of respondents 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 also 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 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 (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

> "69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since 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, 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.

26. 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 07.06.2022, where as respondents have offered the possession to present complainant on 16.08.2018. The chronology of offering possession by respondent on 16.08.2018 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 offer of possession, which were not complied with by complainant, therefore respondents have terminated the unit in question on 17.08.2019 under clause 6.1 of agreement that provide for termination of unit after forfeiture of earnest money. Respondents have stated that complainant never came forward to take possession and pay outstanding dues, therefore, having no other option respondents had cancelled/terminated the unit in question on 17.08.2019. Complainant on the other hand, stated that the letters of offer of possession dated 16.08.2018 was challenged by the complainant on the ground that same was not accompanied with occupation certificate and respondents have raised various illegal demands with said offer of possession. Complainant also alleged that more than the basic sale consideration stands paid to the respondent in the year 2018, any demand letters issued after year 2018 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 dated 30.08.2022 issued by respondents be set aside.

On perusal of documents Authority observes that respondent no.1 had issued 2 termination letters, one dated 17.08.2019 and the subsequent one dated 30.08.2022. Authority observes that both the termination letters were issued on account of non- payment of dues as demanded by respondents at the time of offer of possession dated 16.08.2018, it is factual position that the 1st termination letter dated 17.08.2019 was issued even before obtaining occupation certificate, where as by the time complainant had paid more than the basic sale price. Thus, termination letter dated 17.08.2019 was per se illegal and arbitrary. As far as the subsequent termination letter dated 30.08.2022 is concerned, it was issued after obtaining occupation certificate. However, it is also a matter of fact that after obtaining occupation certificate, respondent did not make a fresh offer of possession, rather kept on sending reminder of non-payment of dues that were demanded at time of issuance of offer of possession dated 16.08.2018. Since, the offer of possession 16.08.2018 was legally not valid, any act of non-payment of amounts demanded within such offer of possession shall not attract termination of the unit, therefore, termination letter dated 30.08.2022 was also invalid and is hence bad in eyes of law. Further, even after issuing second termination letter dated 30.08.2022, respondents did not refunded the money to

complainant and the paid amount by the complainant still lies with respondents. Further, non-refunding of paid amount by respondents also shows the intention of the respondent to never cancel the unit.

27. Authority further observes that respondents were obligated to offer possession of the unit by 09.09.2012, however it is a matter of fact that respondent had miserably failed to fulfill its obligation to deliver the possession of the unit within stipulated time. After a lapse of 6 years, respondents have offered possession of unit on 16.08.2018, alongwith additional demands which are challenged by complainant by way of filing rejoinder on 20.06.2024 in registry. Now, complainant had prayed for setting aside the above stated illegal demands and respondents be directed to make fresh offer of possession in terms of buyer agreement and provision of RERA Act, 2016 and Rules and regulations made thereunder. The disputed demands raised by respondents are being dealt under following heads:

i. Firstly, area of allotted unit was 1203 sq.ft, which was increased in offer of possession dated 16.08.2018 to 1371 sq.ft. whereas **final area approved in occupation certificate is lesser i.e. 1087 sq. ft:** Complainant has raised an objection with respect to difference in area as provided in offer of possession dated 16.08.2018 and occupation certificate dated 07.06.2022. Complainant has alleged that respondent is in receipt of occupation certificate dated

07.06.2022, which provides that area of unit is 101.003 sq.mtrs or 1087 sq.ft, whereas area of the unit as provided in offer of possession dated 16.08.2024 is 127.37 sq.mtrs or 1371 sq.ft. Therefore, complainant has requested that respondents be directed to charge only for the area approved in occupation certificate, i.e. 1087 sq.ft.

To this, it is the argument of respondents 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 respondents 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 respondents that relief beyond pleadings cannot be awarded to complainants, it is observed by the Authority that complainant herein is seeking valid offer of possession alongwith delay interest. The term 'valid offer of possession' duly incorporates all legal demands only which respondents can justifiable claim from complainant. Demand of payment as per approved area is a part of legal demands which can be raised by respondents. So, in essence demand for area whether approved or

increased is a part of valid offer of possession. Hence, objection of respondents is rejected being devoid of merit.

Further, in respect of issue of difference in area as provided in offer of possession dated 16.08.2018, i.e. 1371 sq. ft and occupation certificate dated 07.06.2022, i.e. 1087 sq. ft., Authority observes that respondents are 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 respondents deserves to be rejected and respondents are directed to re-calculate the price of area of unit, base of the unit area provided in occupation certificate i.e. 1087 sq. ft.

ii. Secondly, with regard to the cost escalation charges of Rs 73,779.99/-, it is observed by the Authority that deemed date of

possession in captioned complaint is ascertained as 09.09.2012. The respondents issued a letter offering possession on 16.08.2018 to complainant, despite the deemed date of possession being in 2012, resulting in delay of 6 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 6 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.

iii. 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 07.06.2022. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for 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.

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 09.09.2012 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. prior to deemed date of possession. No doubt the complainant as per clause 1.5 of the

floor buyer agreement has 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 16.08.2018 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 respondents are not entitled to charge GST from complainant/allottee as liability of GST has not become due up to the due date of possession as per the agreement.

28. That, it is established that even after receiving more than basic sale price, respondents have delayed the possession and offered the same on 16.08.2018, which was before obtaining occupation certificate which resultantly not only makes the said offer invalid or bad in eyes of law but also makes the subsequent cancellation letter illegal and void. Complainants herein are still 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. Further, respondents have not placed on record any document showing as to any fresh offer of possession was made to complainant after obtaining occupation certificate on 07.06.2022, hence, the Authority

hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession, i.e., 09.09.2012 up to the date on which a valid offer is made to them after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded 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., 11.02.2025 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. 09.09.2012 till date of valid offer of possession.

33. Authority has got calculated the interest on total paid amount from due date of possession i.e. 09.09.2012 till date of order i.e. 11.02.2025, which works out to Rs **25,65,765/-** as per detail given in the table below:

Complainant claims to have paid an amount of Rs 24,40,381.03/- at page no. 31 of complaint. In support receipts of Rs 23,12,972.82/- has been annexed in complaint file as Annexure C-5 from page no. 69-78 of complaint book. However statement of account dated 30.08.2022 annexed at page no. 79 of complaint, shows that amount of ₹ 24,40,381.03/- stands received by respondents. Accordingly, an amount of Rs 23,12,972.82/- is taken from receipts annexed in complaint file and

remaining/differential amount of Rs 1,27,408.21/- is taken from statement of account dated 30.08.2022.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession i.e. 09.09.2012 or date of payment whichever is later	Interest Accrued till 11.02.2025 (in ₹)
1.	11,32,487.99/-	09.09.2012	15,63,234/-
2.	2,34,483.34/-	20.04.2017	2,03,586/-
3.	14,000/-	03.07.2017	11,840/-
4.	5,03,450/-	02.09.2017	4,16,443/-
5.	1,69,125/-	12.09.2017	1,39,382/-
6.	2,59,426.49/-	19.04.2018	1,96,525/-
7.	1,27,408.21/-	30.08.2022	34,755/-
Total:	₹24,40,381.03/-		**₹25,65,765/-**
Monthly interest commencing w.e.f 12.02.2025	**₹20,780/-**		

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 27 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. 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.

.....
CHANDER SHEKHAR
[MEMBER]

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