HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1134 of 2023
Date of filing.:	30.05.2023
First date of hearing.:	11.07.2023
Date of decision.:	11.02.2025

Suresh Kumar Shukla S/o Sh. Ganga Prasad Shukla
R/o, CGT- 254, DLF Capital Greens, 15,
Shivaji Marg, Moti Nagar, Karam Pura, West Delhi,
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 BPTP Parklands Pride Limited
   (Earlier know M/s New Age Town Planners Ltd.)
   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 the respondent

ORDER:

1. Present complaint has been filed on 30.05.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-88-FF , 1st floor, admeasuring

		1025 Sq. Ft.(95.225 sq.mtrs.)
5.	Date of Allotment	06.10.2011
6.	Date of Flat buyer agreement	06.03.2012
7.	Possession clause in FBA (Clause 5.1)	**Clause 5.1** *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 the floor buyer agreement. 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.	Total/Basic sale consideration	₹19,69,329/-(Discount-96,480/-)= ₹18,72,849/-
9.	Amount paid by complainant	₹19,06,275.15/-
10.	Offer of possession.	01.08.2024
11.	Date of occupation certificate	30.04.2024

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

3. That the complainant had applied for booking of independent residential floor in respondent's project-'Park Elite Floors", situated at Faridabad in the year 2009 and accordingly unit no. PE-88-FF, 1st Floor, admeasuring 1025 sq.ft. was allotted to the complainant vide allotment letter dated 06.10.2011. The floor buyer agreement was executed between parties on 06.03.2012.

4. As per terms of the agreement possession of the unit was to be delivered latest by 06.03.2014. However, respondents has not made any offer of possession till date. That, the basic sale price of the unit was fixed at ₹18,72,849/- out of which complainant had already paid an amount of ₹ 19,06,275.15/- from year 2009-2016. Copies of payment receipts and statement of account dated 24.04.2023 issued by respondents are annexed as Annexure C-3.

5. That the complainant had made all the payments on time and it is respondents who have miserably delayed the construction and development of the project. Infact, respondents have time and again extended the probable date for the completion of the project, thus misleading the complainant. The complainant on the other hand had

already made almost the payment of the entire sale consideration and therefore was left with no other option than to place reliance on the words of the respondents. Further, it is stated that the floor buyer agreement executed between parties has arbitrariness and unfairness which could clearly be derived from clause 7.1, 7.3 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. After paying an amount of ₹ 17,59,150/-. Nonetheless, the possession of the residential floor has been due since March 2014, however till date the same has not been delivered. Further, from booking of the unit 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 nine years from due date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainant.

6. That the complainant is aggrieved by the conduct of the respondents and inordinate delay in the completion and development of the project and have therefore approached this Authority. Hence the present complaint.

C. RELIEF SOUGHT

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

   i. Direct the respondents to deliver immediate possession of the floor of the complainants i.e. PE-88-FF, BPTP Park Elite Floors, Parklands, Faridabad, Haryana admeasuring 1025 sq ft. after due completion and receipt of occupancy & completion certificate(s) along with all the promised amenities and facilities and to the satisfaction of the complainant; and

   ii. Direct the respondents to pay prescribed rate of interest as per the RERA Act, 2016 on the amount already paid by the complainants from the promised date of delivery i.e. 06.03.2014 till the actual physical and legal delivery of possession; 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 06.03.2012 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation

charges, delay penalty/interest charges, GST charges, VAT charges, club membership charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant and further to set aside & quash one sided, unilateral, illegal, unfair, arbitrary contracts/ undertakings/agreements/ affidavits, etc;

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

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondent filed detailed reply on 19.02.2024 pleading therein:

8. That present complaint pertains to an independent floor bearing no. PE-88-FF, on first floor tentatively admeasuring 1025 sq. ft super area, in the real estate Project "Park Elite Floors" being developed by the respondents. 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.

9. Vide booking form dated 25.05.2009 and vide allotment letter dated 06.10.2011, complainant was allotted unit bearing no. PE-88-FF, admeasuring 1025 sq.ft. in respondent project.

10. That complainant had executed floor buyer agreement dated 06.03.2012 for unit bearing no. PE-88-FF, admeasuring 1025 sq. ft. in the project known under the name and style of "Park Elite Floors" (hereinafter referred to as the "Project"). Moreover, complainant had executed an undertaking and Affidavit dully agreeing to the tentative nature of the unit. As per the Clause 5.1 of the agreement, the due date of possession was 06.09.2014 i.e. 24 months from date of execution of Floor Buyer Agreement along with grace period of 180 days. Respondents have referred to **Appeal no. 122 of 2022 titled as Emaar MGF Land Ltd. Vs. Laddi Paramjit Singh** stating that if grace period is mentioned in the clause, the benefit of the same is allowed. Hence, deemed date of possession in present case comes to 06.09.2014.

11. 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 respondents had to encourage additional incentives like timely payment discounts while on the other hand, delays in payment caused major setbacks to the development works. Respondents have given inaugural discount of ₹ 96,480/- and timely payment discount

of ₹ 71,157.05/- to complainant. 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 respondents such as ban on construction by the Hon'ble Supreme Court of India in **M.C. Mehta v. Union of India**, ban on construction by the Principal Bench of NGT in **Vardhaman Kaushik v. Union of India** and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present pendemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. 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.

12. Further, respondents have challenged the maintainability of the present complainant on the ground that floor buyer agreement with complainant 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. SHORT REJOINDER FILED BY COMPLAINANT ON 27.08.2024 RAISING ADDITIONAL ISSUES

13. That respondent after receipt of occupation certificate dated 30.04.2024 had issued an offer of possession dated 01.08.2024 during pendency of the present complaint. It is the submission of complainant that said offer of possession is illegal because it is not accompanied with delay interest on account of delay caused in offering the possession and is accompanied by illegal demands. Further, as per the allotment letter dated 06.10.2011, tentative plot area was 180 sq.yrds. Offer of possession dated 01.08.2024 mentions the super built up area of the present unit/floor was 95.22 sq. mtr., or 1025 sq ft, however, in the alleged OC dated 30.04.2024, the area of the unit is only 74.692 sq. mtr or 803.97 sq ft. This clearly proves the offer of possession and statement of receivables & payables are illegal & against the settled principles of the RERA Act, 2016 and need to applied/issued/revised afresh.

14. Few of the concerns in brief are as follows:-

    i. No provision for the compensation & delay interest, etc.,, to the complainant in the final statement issued with offer of posession. The

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

ii. Unilateral increase in total sale price of the unit-from Rs. 21,64,702.25/- as per the Statement of Account dated 24.04.2023 (Pg. no. 74 of the complaint) and now illegally enhanced to Rs. 24,30,841.55/-.

iii. Cost escalation- The reasons for the cost escalation- Rs. 1,08,732/- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.

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

v. That there is no occupation certificate and completion certificate attached. That further the alleged OC dated 30.04.2024 is for a smaller area of the floor/Unit.

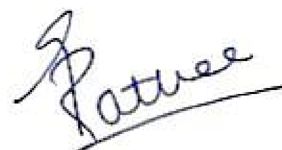
vi. Illegal undertaking/indemnity attached with the alleged offer of possession (page- 17-24).

vii. GST has been wrongly imposed on the complainant.

viii. Charging illegally and arbitrary for the area and super area of the present unit.

F. REPLY BY RESPONDENT FILED ON 10.09.2024 TO SHORT REJOINDER FILED BY COMPLAINANT ON 27.08.2024:

15. That in respect of difference in area of unit allotted in agreement/mentioned in offer of possession and as mentioned in occupation certificate, respondent stated that final super area of the unit stands as 1510 sq. ft. Complainant herein attempts to compare the FAR and the super area which cannot be practically done as the super area is inclusive of the FAR + area of balcony/veranda+ proportionate common areas, while the occupation certificate has been attained for FAR only. Further, respondent referred to clause 1.10 of agreement for the definition of 'covered area and clause 1.33 for definition of 'super built up area'. Thereafter, it is stated that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-
"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being



followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016. Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

16. It has been submitted that the provision of Occupation Certificate is enshrined in Clause 4.10 of Chapter IV of the Haryana Building Code, 2017 and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he submitted that perual of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code,2017, in accordance with several provisions. So, claim of complainant is misguided and erroneous. Further, he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainant willfully, without consent accepted each and every terms of agreement. Now, at this stage he cannot preclude himself from abiding by the terms of agreement. The intent and purpose for which agreement was executed has to be given effect in case complainant does not want to come out of said agreement. He stated that the complainant

has wrongly challenged the payment of dues with respect to the GST,VAT, delayed payment interest, club membership, cost escalation, holding charges and maintenance charges. Payments in regard to the same were mutually and voluntarily agreed between the complainant in different clauses of agreement. In support, he referred to para 11, 14 and 15 of judgement dated 19.11.2010 passed by Hon'ble Supreme Court in **Civil Appeal No. 550,551,1611 of 2003 titled as DLF Universal Limited and Anr. Vs Director, Town and Country Planning Haryana and other.**

G. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS

17. Ld. counsel for complainant reiterated his submissions and pressed upon for relief of possession of booked unit alongwith delay interest. He further stated that respondent be directed to charge only for the area against which the occupation certificate has been granted by the competent authority, i.e., 74.692 sq. mtr or 803.97 sq.ft. He referred to his rejoinder wherein he has raised objection to the offer of possession dated 01.08.2024 and requested to direct respondent not to charge illegal demands/taxes from complainant at the time of offer of physical possession of the floor.

18. Ld. counsel for respondent argued that complainant nowhere in its pleadings as well as in relief sought has mentioned anything related to difference of area for which occupation certificate has been provided. He stated that relief beyond pleadings/relief sought cannot be awarded to complainant. In support, he read all the issues to be decided alongwith relief sought at the time of hearing. Further, counsel for respondent reiterated his submissions as mentioned in para 10-14, 17-18 of this order.

H. ISSUES FOR ADJUDICATION

I. Whether offer of possession issued vide letter dated 01.08.2024 valid or not?

II. Whether demands raised along with offer of possessions certain demands are 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?

I. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

19. **Findings on the objections raised by the respondent.**

I.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. PE-350-SF, on 2nd

Floor admeasuring 1371 sq. ft super area 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 5.1 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.

I.II Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondents are that provisions of the RERA Act of 2016 will not apply to the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by

the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act, 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

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

Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, in present case, respondents had only placed on record copy of occupation certificate dated 30.04.2024 obtained from competent authority 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,

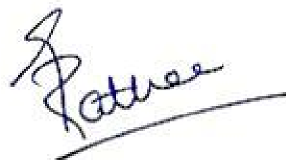
therefore this Authority has complete jurisdiction to entertain the captioned complaint.

20. After hearing both parties and going through documents on file, Authority observes that upon booking, a unit bearing no. PE-88-FF, 1st floor, admeasuring 1025 sq.ft. was allotted to complainant in the real estate project -Park Elite Floors, Parklands, Faridabad. A floor buyer agreement was executed between the parties on 06.03.2012 for basic sale price for ₹18,72,849/-against which complainant had paid an amount of ₹ 19,06,275.15. As per clause 5.1 of agreement, possession was supposed to be delivered within 24 months from date of execution of floor buyer agreement alongwith grace period of 180 days for applying for occupation certificate. Taking 24 months from date of agreement, the deemed date of possession work out to 06.03.2014.

Further with regard to grace period of 180 days, Authority observes that respondents were obligated to complete the construction within 24 months from execution of agreement and completion of construction work within 24 months, respondents were to apply for occupation certificate within 180 days. It is a matter of fact that the respondents did not apply for grant of occupation certificate right after expiry of 24 months period from completion of construction of unit i.e. 06.03.2014. Infact, it is admitted by respondents that occupation certificate was

received on 30.04.2024 i.e. after delay of 10 years from due date for completion of construction of unit. Time period of 10 years taken by respondent to complete the construction work and to receive occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondent to grant grace period is rejected.

21. 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 06.03.2014. 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 and order dated 07.11.2017 passed by Environment Authority etc. In this regard Authority observes that NGT orders and orders passed by Environment Authority as relied upon by respondents pertains to the year 2016 and 2017, therefore making them a subsequent events to the date on which respondent was duty bound to handover possession. Hence, respondents 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 2014, 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.

22. Further, complainant is also aggrieved by the fact that when the respondent offered possession on 01.08.2024 i.e. during pendency of present case, same was accompanied by illegal demands, this makes said offer illegal and bad in eyes of law. Complainant has challenged these demands via filing rejoinder on 27.08.2024 in the registry of the Authority.

    In this regard, Authority observes that once respondent has offered possession to complainants on 01.08.2024 i.e. after obtaining occupation certificate on 30.04.2024, is technically a valid offer of possession in eyes of law Further, as per Section 19(10) of RERA Act 2016, it is the duty of the complainant to accept the said offer within two months of obtaining occupation certificate. Nevertheless, complainant has challenged the demands raised alongwith said alleged offer of possession. Details of such objections raised by complainants are incorporated in para 13-14 of this order. Further, objections to each illegal demand raised by complainant are dealt with at length as under:-

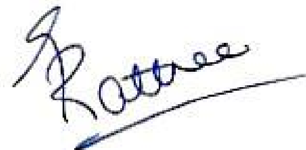
    i. Firstly, area of allotted unit was 1025 sq.ft, offer of possession has also been made for the same area i.e. 1025 sq.ft, **whereas final area approved in occupation certificate is lesser i.e. 803.97 sq. ft:**

Complainant has raised an objection with respect to difference in area as provided in offer of possession dated 01.08.2024 and occupation certificate dated 30.04.2024. Complainant has alleged that respondent is in receipt of occupation certificate dated 30.04.2024, which provides that area of unit is 74.692 sq.mtrs or 803.97 sq.ft, whereas area of the unit as provided in offer of possession dated 01.08.2024 is 95.22 sq.mtrs or 1025 sq.ft. Therefore, complainant has requested that respondents be directed to charge only for the area approved in occupation certificate, i.e. 74.692 sq.mtrs or 803.97 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 01.08.2024, i.e. 1025 sq. ft and occupation certificate dated 30.04.2024, i.e. 803.97 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. 803.97 sq. ft.

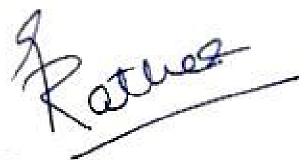
ii. Secondly, with regard to the **cost escalation charges of Rs 1,08,732/-**, it is observes by the Authority that deemed date of possession in captioned complaint was 06.03.2014, whereas respondents issued a letter offering possession on 01.08.2024(during pendency of the complaint), i.e. after an inordinate delay of 9 years. Additionally, the offer was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which in view of this Authority is unjust as the same has been due to respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay is solely attributed to the respondents, as there is nothing on record to justify the delay from the date of execution of FBA till deemed date of possession. Thus, it shall be unfair to pass the burden of escalated costs on to

the complainant. The complainant, having already endure 9-year delay, should not be penalized with cost escalation charges for no fault on her part. 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 are hereby set aside.

iii. Thirdly, with regard to the demand raised by the respondent on account of **club charges be waived off**, 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 30.04.2024. However, 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 the time of arguments that the proposed club has not come into existence, with only a temporary club operational, if at all. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being

made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it in future as and when proper club will become operational at site.

iv. Fourthly, with regard to the demand raised by the respondent on account of **GST,** Authority is of the view that deemed date of possession in this case works out to 06.03.2014 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 9.1 read with clause 1.32 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 01.08.2024 by that time GST had become applicable. However, it is a settled law that a person cannot take benefit of his own wrong/default. Therefore, the respondent is not entitled to charge GST from complainant/allottee as liability of GST has not become due up to the due date of possession as per the agreement.



v. Lastly, counsel for respondents have also stated that inaugural discount of ₹ 96,480/- and timely payment discount of ₹ 71,157.05/- 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 2009-2016 itself. Secondly, it is obvious that respondents had 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.

23. Now, issue which remains to be adjudicated is delay interest. Respondent had offered possession of unit on 01.08.2024 after obtaining occupation certificate thus the same was technically valid offer of possession, though as observed above there were certain irregularities in the statement of account. However, such irregularities not make the offer of possession illegal per-se. It is important to refer to Section 19(10). Relevant portion is reproduced below:

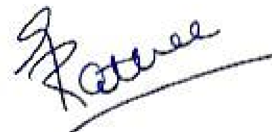
"*19(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*"

As per above stated section, it is also the duty of the complainants to take possession within two months after receipt of occupation certificate, which in present case complainant has failed to take the same in specified time. It is a matter of fact respondents have also offered the valid possession after delay of around 10 years from deemed date of possession, i.e., 06.03.2014. Complainant herein is 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 complainant on 01.08.2024 after obtaining occupation certificate. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession, i.e., 06.03.2014 up to the date on which a valid offer is sent to them after receipt of occupation certificate, i.e., 01.08.2024. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

24. 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;*



25. 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".*

26. 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%.

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

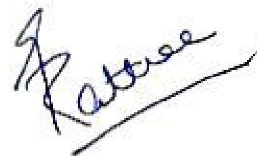
2.00%) from the due date of possession i.e. 06.03.2014 to date of valid offer of possession, i.e. 01.08.2024.

28. Authority has got calculated the interest on total paid amount from due date of possession i.e. 06.03.2014 till the date of valid offer of possession i.e. 01.08.2024 which works out to Rs **21,98,768`**/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession i.e. 06.03.2014 or date of payment whichever is later	Interest Accrued till 01.08.2024 (in ₹)
1.	18,88,983/-	06.03.2014	21,84,089/-
2.	17,288/-	10.12.2016	14,679/-
Total:	**19,06,271/-**		**21,98,768/-**

J. DIRECTIONS OF THE AUTHORITY

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



I. 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. Respondent is directed to issue fresh statement of account in accordance with directions issued in para 22 of this order.

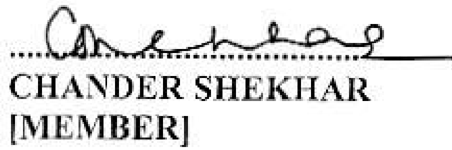
III. Respondent is directed to pay upfront delay interest as calculated in para 28 of this order to the complainant towards delay already caused in handing over the possession within 90 days from the date of uploading of the order. Respondents shall be liable to pay delay interest to complainant as per Section 2(za) of RERA Act,2016.

IV. Respondent is 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 respondent 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 respondent at the time of actual possession offered to them.

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

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



CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]