HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2141 of 2022**
Date of filing:	**21.09.2023**
First date of hearing:	**10.10.2023**
Date of decision:	**07.04.2025**

1. Mr. Balkishan Sahni,
   S/o Mr. Rajinder Kumar Sahni,
   R/o 18, Dipni Apartments, Pitampura,
   New Delhi-110034.

2. Mrs. Abha Sahni,
   W/o Mr. Balkishan Sahni,
   R/o 18, Dipni Apartments, Pitampura,
   New Delhi-110034.

....COMPLAINANTS

VERSUS

1. Countrywide Promoters Pvt. Ltd.
   (Through its Managing Director),
   Registered office-OT-14, 3rd Floor, Next Door,
   Parklands, Sector-76,
   Faridabad, Haryana-121004

2. M/s BPTP Limited
   (Through its Managing Director),

Registered office-OT-14, 3rd Floor, Next Door,
Parklands, Sector-76,
Faridabad, Haryana-121004

....RESPONDENTS

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Sh. Anuj Diwan, Counsel for the complainants through VC.

Sh. Hemant Saini, Counsel for both the respondents.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 21.09.2023 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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-81, Parklands, Sector-81, Faridabad, Haryana
2.	Nature of the project.	Resident Floor
3.	RERA Registered/not registered	Lapsed project
4.	Details of allotted unit.	Unit no. AQ5-18-SF, 3BHK, Super area-1478 sq. ft. constructed on plot area measuring 300 sq. yds.
5.	Date of allotment	01.10.2009
6.	Date of execution of floor buyer agreement	08.10.2010
7.	Deemed date of possession	08.10.2012 (As per Clause 5.1 of BBA, 24 months from the date of execution of agreement)
8.	Basic sale price	₹29,50,015/-
9.	Amount paid by the complainants	₹36,51,259/-
10.	Occupation certificate received on	28.02.2019
11.	Offer of possession	07.12.2024 via email
12.	Payment plan	Construction linked plan

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

3. Facts of the complaint are that the Complainants approached the Respondents to purchase an Independent Residential Floor in the project "Park 81, Parklands" located in Sector 81, Faridabad, for which a booking amount of ₹3,50,000/- was paid on 01.10.2009.

4. That pursuant to the booking, Unit No. AQ5-18-SF on the 2nd Floor having a super built-up area of 1,478 sq. ft. was allotted to the Complainants.

5. That the Builder Buyer Agreement was executed on 08.10.2010, after an unjustified delay of one year and only after the Respondents had received ₹12,00,707/-, which is approximately 40% of the basic sale price. Copy of the Builder Buyer Agreement is annexed as Annexure C-1. Copies of the relevant payment receipts are collectively annexed as Annexure C-2.

6. That as per Clause 5.1 of the BBA, the Respondents were obligated to hand over possession within 24 months from the date of execution of the Agreement. However, the Respondents failed to adhere to this timeline.

7. That the Respondents vide email dated 20.01.2014 stated that possession would be delivered by mid-2015, but failed to do so. Copy of the said email is annexed as Annexure C-3.

8. That upon further inquiries in 2017, the Respondents again promised possession in Q3 of 2017 via email dated 04.05.2017. Copy of the said email is annexed as Annexure C-4.

9. That the Respondents vide letter and email dated 04.10.2018 raised a demand of ₹7,86,639.86/- without enclosing the Occupation Certificate and also wrongfully increased the super area from 1478 sq. ft. to 531 sq. ft. (increase of 53 sq. ft.), thereby raising additional charges. Copy of the email dated 04.10.2018 is annexed as Annexure C-5 and a copy of the demand letter dated 04.10.2018 is annexed as Annexure C-6.

10. That the Complainants, through an email dated 16.10.2018, requested to intimate the status of the Occupation Certificate, to which the Respondents failed to provide a valid response. Copy of the email is annexed as Annexure C-7.

11. That to avoid imposition of holding charges, the Complainants made the final payment on 05.11.2018. Copy of the payment receipt is annexed as Annexure C-2.

12. That despite repeated follow-ups through emails dated 09.11.2020, 21.12.2020 and 23.07.2021, the Respondents did not provide a copy of the Occupation Certificate and continued to falsely claim that the same was

awaited. Copies of the said emails are annexed as Annexures C-8, C-10, and C-11, respectively.

13. That the Complainants sent a detailed email dated 28.07.2021 expressing concern over non-receipt of the OC and charging of maintenance without legal possession. Copy of the email is annexed as Annexure C-12.

14. That in response, the Respondents acknowledged ongoing efforts to obtain approvals and agreed to bear any penalties, yet failed to inform about the OC obtained earlier. Copy of the Respondent's reply dated 28.07.2021 is annexed as Annexure C-13.

15. That the Respondents reaffirmed its position in an email dated 03.08.2021. Copy is annexed as Annexure C-15. That during a visit in October 2021, the Complainants were abruptly informed that the Occupation Certificate had been received long ago on 28.02.2019, but no communication or intimation was ever made to the Complainants.

16. That the Complainants are entitled to delay compensation from 30.09.2011 until actual possession is legally offered and are not liable to pay maintenance charges or GST in violation of law.

C. RELIEFS SOUGHT

17. That the complainants seek following relief and directions to the respondents:-

i. Direct the Respondents to pay the delayed interest compounded @18% per annum for the delayed period from the due date of possession, i.e., 01.10.2011, till the date actual legal possession is being offered;

ii. Direct Respondents to treat offer of possession from the date when their account is settled and Occupation Certificate is shared with the Complainants as per clause 5.4 of the Agreement;

iii. Direct Respondents to refund of a sum of Rs. 1,31,022/- paid towards GST;

iv. Direct Respondents to refund of a sum of Rs. 1,52,028/- towards Cost Escalation Charges.

v. Pass any other order which this Authority may deem fit and proper in the light of facts of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

The respondents presented a detailed reply on 03.05.2024 contesting the complainants' claims on several grounds, which are as under:

18. That the present complaint is not maintainable on the ground that:

a. That Respondent No. 2 is merely a confirming party to the agreement and is neither a proper nor a necessary party to the present case. No relief has been sought against Respondent No. 2. Therefore, the name of Respondent No. 2 should be deleted from the array of parties.

b. The construction of the unit was delayed due to force majeure circumstances, including the regulation of mining activities, shortage of materials and other judicial orders. These circumstances were beyond the control of Respondent No. 1. The Respondent No. 1 made every effort to procure materials at 3-4 times the regular rates without shifting the burden to the Complainants.

c. It is the Complainants' obligation under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016 to take possession of the unit within two months of the issuance of the occupancy certificate.

d. The agreements executed between the parties predate the implementation of the Real Estate (Regulation and Development) Act, 2016, and are not governed by RERA. The RERA Act does not apply to agreements executed prior to its enactment, as clarified in the Haryana RERA Rules.

19. The Complainants expressed their interest and willingness to purchase a unit in the project of Respondent No. 1, known as "Park 81" (hereinafter referred

to as "the Project"). The Complainants applied for the same via an application/booking form dated 21.09.2009. That an inaugural discount of ₹1,62,250/- and a timely payment discount of ₹1,34,304.35/- were provided by Respondent No. 1. It was agreed between the parties that the timely payment discount is a rebate against the total sales consideration and does not form part of the total sales consideration. A copy of the booking form dated 21.09.2009 is annexed as Annexure R1.

20. Consequently, the Complainants were provisionally allotted unit no. AQS-18-SF, Second Floor, admeasuring 1478 Sq. Ft. (the "Unit") vide allotment letter dated 16.03.2010. A copy of the allotment letter dated 16.03.2010 is annexed herewith as Annexure R2.

21. Thereafter, the parties entered into a Floor Buyer's Agreement (FBA) dated 08.10.2010 (the "FBA") in respect of the unit. The relationship between the parties is purely contractual, as per the terms and conditions agreed upon in the FBA. A copy of the FBA dated 08.10.2010 is annexed and marked as Annexure R3.

22. It was agreed between the parties that the area of the unit was tentative and subject to change, as per the relevant clauses in the FBA:

a. Clause 2.2: The Seller (Confirming Party) agrees to sell the unit with a tentative super built-up area of 1,478 sq. ft. (137.310 sq. mtrs.).

b. Clause 2.15: The final super built-up area of the unit would be determined after receiving the completion certificate.

23. The Complainants submitted an affidavit, notarized on 16.11.2010 and executed an Undertaking and Affidavit, agreeing to the tentative nature of the unit. The relevant clauses from the Undertaking and Affidavit are reiterated below:

a. Clause (i) of the Undertaking: The Complainants understand that the layout/building plan is tentative and agree to accept any modifications or changes in the layout/building plan.

b. Clause (ii) of the Affidavit: The Complainants undertake to accept any changes in the super built-up area or location of the unit as per the modified layout/building plan. Copies of the Undertaking and Affidavit are annexed as Annexure R4 (Colly).

24. The Complainants took a loan against the unit in question from Housing Development Finance Corporation Limited (HDFC), for which permission to mortgage was issued by the Respondents. The parties entered into a Tripartite

Agreement on 02.09.2011. That the liability for repayment of the loan amount was on the Complainants themselves, as per Clause 3.

25. The complainant did not pay the installments in time affecting the stages of construction. The copies of the payment requests, payment receipts, and reminders issued for non-payment are annexed as Annexure R6 (Colly).

26. As per the FBA, possession was proposed to be handed over within a period of 24 months from the execution of the FBA, with a grace period of 180 days. The Respondents are entitled to avail of the grace period due to force majeure circumstances. This position has been clarified by the Learned Tribunal, Chandigarh, in the case titled *Emaar MGF Land Ltd. vs Laddi Praramjit Singh (Appeal No. 122 of 2022).*

27. Despite delays, Respondent No. 1 completed the construction and offered possession of the unit to the Complainants on 04.10.2018. The Complainants were asked to remit the outstanding dues in order to proceed with the execution of the conveyance deed. A copy of the offer of possession is annexed as Annexure R7.

28. Despite multiple reminders issued by the Respondents (on 04.10.2018 and 09.11.2020), the Complainants failed to remit the outstanding dues and take possession of the unit. A copy of the letter dated 09.11.2020 requesting the

Complainants to remit the outstanding dues is annexed as **Annexure R8**. As per Clause 2.14 of the FBA, the Complainants are liable to bear any escalation charges due to new taxes or levies. The Complainants are also liable to pay any taxes, including GST, as per Clause 20.3 of the FBA.

29. The Respondent has filed an application dated 04.04.2025, wherein respondent has annexed the Occupation Certificate issued by the competent authority in respect of the unit in question, dated 28.02.2019, marked as Annexure R-9. Additionally, the Respondent has annexed a copy of the offer of possession sent to the Complainant via email dated 07.12.2024, enclosed as Annexure R-10. A settlement offer dated 14.01.2025 has also been submitted and annexed as part of Annexure R-10. Furthermore, a recovery letter dated 04.03.2025 has been filed and marked as Annexure R-12. The Authority has perused the application along with the annexures and has duly considered the same for proper adjudication of the present matter.

E. ARGUMENTS OF LEARNED COUNSELS FOR THE COMPLAINANTS AND RESPONDENTS

30. Learned counsel for the complainants reiterated the basic facts of the case and submitted that as per the last order of this Authority dated 03.02.2025, the complainants were directed to visit the site office of the respondent promoter on 17.02.2025 for the purpose of inspecting the site and taking possession of

the allotted unit. In compliance with the said order, the complainants sent a total of six emails, three to the main counsel and three to the junior counsel of the respondents requesting coordination for the site visit and possession. However, despite repeated attempts, no possession has been offered or handed over to the complainants to date. It was further submitted that the respondents is demanding illegal charges as a pre-condition for handing over possession. Aggrieved by this conduct, the complainants have approached the Authority seeking interest for the inordinate delay in possession.

31. In response, the learned counsel for the respondents submitted that the charges being demanded from the complainants are not illegal, as alleged, but are statutory dues and government-imposed taxes that are lawfully payable by the complainants. These include Goods and Services Tax (GST), stamp duty, and other related levies mandated under applicable laws. The respondents emphasized that these amounts are a standard requirement and form part of the contractual obligations under the Builder Buyer Agreement. The respondents further contended that possession of the unit is ready and has been offered and any delay is due to the complainants' failure to clear the requisite dues.

F. ISSUES FOR ADJUDICATION

32. Whether the complainants are entitled to get possession of booked flat along with delay interest in terms of Section 18 of RERA, Act of 2016?

33. Whether respondent is liable to refund amount of ₹131,022/- paid towards GST and refund of ₹1,52,028/- towards cost escalation charges paid by the complainant?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

34. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that complainants booked Unit no. AQ5-18-SF on 2nd floor admeasuring 1478 sq. ft. in the Respondent's project namely *Park 81, Parklands*, located in Sector-81, Faridabad vide allotment letter dated 01.10.2009. Floor buyer agreement was executed between the parties on 08.10.2010. It is further observed that the Complainants have paid an amount of ₹36,51,259/- towards the basic sale consideration of ₹29,50,015/- as confirmed by both parties during the proceedings. Lastly, respondents have obtained occupancy certificate for the unit in question from the competent Authority on 28.02.2019.

35. **Findings on the objections raised by the respondents.**

a. ***That Respondent No. 2 (BPTP Ltd.) is merely a confirming party to the agreement and is neither a proper nor a necessary party to the present case.***

No relief has been sought against Respondent No. 2. Therefore, the name of Respondent No. 2 should be deleted from the array of parties.

The respondents submissions regarding Respondent No. 2 (BPTP Ltd.) being an unnecessary party is wholly misconceived. This complaint is maintainable under RERA, as the Floor Buyer Agreement has been jointly executed between the complainants, BPTP Ltd., and M/s Countrywide Promoters Pvt. Ltd. The contract clearly bears the names of both respondents, thereby establishing their joint responsibility. Further, all payment receipts have been issued in the name of BPTP Ltd., and consistent email correspondence has taken place with BPTP Ltd. regarding possession and project-related concerns. This clearly shows that the entire contractual relationship exists with both respondents, who are jointly and severally obligated towards the complainants. Hence, Respondent No. 2 is not merely a confirming party but a proper and necessary party to the present proceedings, and the objection to its inclusion is liable to be rejected.

b. ***Objections raised by the respondents regarding force majeure conditions.***

The respondents were obligated to deliver possession of the unit to the complainants within the period stipulated in the clause 5.1 of the Floor Buyer Agreement, i.e., 24 months from the date of execution of flat buyer agreement, which comes out to be 08.10.2012. It is a fact that respondents

have not fulfilled this obligation within the agreed timelines. There is delay on the part of the respondents and the various reasons given by the respondents such as non availability of raw material due to various orders of Hon'ble Punjab and Haryana High Court and National Green Tribunal and development activities by the judicial authorities in NCR on account of environmental conditions, restrictions on usage of water etc. are not convincing enough as the due date of possession was in the year 2012 as per the agreement and incidents which have been mentioned by the respondents are after this period; therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay on above accounts. So, 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.

c. ***Objection regarding deemed date of possession.***

Admittedly floor buyer agreement was executed between the parties on 08.10.2010 and as per clause 5.1 of it, possession was supposed to be delivered within 24 months from the date of execution of floor buyer agreement, alongwith grace period of 180 days for applying and obtaining the occupation certificate from the competent authority. Further, Respondents in

their written statement has taken a plea that grace period of 180 days be allowed as respondents had received occupation certificate on 28.02.2019. In this regard, Authority is of view that if the respondents had completed the construction within 24 months of execution of agreement, i.e., by 08.10.2012, then time period of 180 days was provided for applying for occupation certificate. Here in this case, respondents did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which could have been started from 08.10.2012 got extended by another 6 years, as occupation certificate was received by respondents on 28.02.2019. Time period of 6 years taken by respondents to complete the construction work and receipt of occupation certificate is not a reasonable duration. There is no justification on record that how this time period is actually incurred for completing the unit in question. 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 and deemed date of possession is taken and considered as **08.10.2012**.

d. ***Objection with regard to the maintainability of the complaint on the ground that the Real Estate (Regulation and Development) Act, 2016, does not apply to the FBA, as it was executed prior to the Act's implementation. The***

agreement is valid and binding under the Haryana RERA Rules, which protect pre-existing agreements.

One of the averments of respondents is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, 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. However, Authority 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, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021, it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of floor buyer agreement dated 08.10.2010 is admitted by the respondents. Said floor buyer agreement was binding upon both the parties.

As such, the respondents were under an obligation to hand over possession on the deemed date of possession and in case, the respondents failed to offer possession on the deemed date of possession, the complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

e. ***That it is the Complainants' obligation under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016 to take possession of the unit within two months of the issuance of the occupancy certificate.***
Authority observes that respondents were obligated to deliver possession by **08.10.2012** but failed to do so. The Occupancy Certificate (OC) was obtained only on **28.02.2019**, reflecting a delay of over six years, entirely attributable to the respondents. Even thereafter, despite repeated requests of the complainants to intimate the status of grant of occupation certificate by the competent authority, the respondent failed to reply properly to the complainants and keep on relying that occupation certificate is yet to be received. Section 19(10) applies only when the promoter has fulfilled its obligation of timely possession. In this case, the respondents not only delayed possession but also failed to obtain the OC in time. Therefore, the complainants cannot be penalized for not taking possession within two months of the OC when the delay was caused by the respondents itself. Accordingly, this objection deserves to be rejected.

f. ***Respondents in their reply have stated that complainants have executed an undertaking, wherin complainants have agreed to two clauses- Clause (i) of the Undertaking: The Complainants understand that the layout/building plan is tentative and agree to accept any modifications or changes in the layout/building plan.Clause (ii) of the Affidavit: The Complainants undertake to accept any changes in the super built-up area or location of the unit as per the modified layout/building plan.***

The Authority is of the view that any such undertaking which seeks to waive the statutory rights of the allottee under the Real Estate (Regulation and Development) Act, 2016 is not legally enforceable. Sections 18(1) and 19(4) of the Act confer statutory rights upon the homebuyer, including the right to possession within the agreed timeline and compensation in the event of delay. These are mandatory provisions and cannot be overridden by a unilateral undertaking.

The Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725,** has held that:

"A clause in a contract which is one-sided, unfair and unreasonable and gives the builder an undue advantage, is against the public interest and cannot be enforced merely because it was signed by the buyer."

In the present case, the complainants had already paid a substantial sum of ₹36,51,259/- towards the total sale consideration. The said undertaking, taken after significant payment appears to be a one-sided document, likely signed

under pressure and without any real choice. Accordingly, the Authority holds that the said undertaking/affidavits are **void ab initio**, being contrary to public policy and against the letter and spirit of RERA. Respondents cannot take shelter behind such an undertaking to avoid its contractual and statutory obligations.

36. Counsel for respondents has also stated that respondents have duly offered the inaugural discount of ₹1,62,250/- and timely payment discount of ₹1,34,304/- to the complainants at the time of booking as a goodwill gesture. However, the said fact has been concealed by the complainants. In this regard, Authority deems appropriate to not allow refund of the above said amount to the respondents for two fold reasons. Firstly, complainants are not interested in withdrawing from the project and are willing to continue with the project, meaning thereby, complainants are sticking to their decision and showing their willingness to have the booked unit for which they had already paid as per the construction linked plan. Secondly, since, complainants have performed their part and are taking their unit for which they had paid in advance to respondents for which certain benefits were credited by respondents to complainants. Now, respondents cannot be allowed to take those amounts back since complainants had completed their part of the

agreement, however respondents have miserably failed to abide by terms of agreement.

37. The respondents, in their reply, have asserted that an offer of possession was made to the complainants on 04.10.2018. However, it is an admitted fact by the respondents that the Occupation Certificate (OC) for the unit was received from the competent authority on 28.02.2019. As per the provisions of the Real Estate (Regulation and Development) Act, 2016, a valid offer of possession must be made only after the receipt of the Occupation Certificate. Any offer made prior to obtaining the OC is not legally tenable and cannot be considered a valid offer of possession under the RERA framework. Therefore, the offer dated 04.10.2018, having been made prior to obtaining the OC, is devoid of legal sanctity and holds no value under law. Subsequently, the respondents have annexed an application dated 04.04.2025, along with an email dated 07.12.2024 sent to the complainants, which reads as follows:

"This is in reference to your booked unit no. AQ5-18-SF in the Project Park 81- Floors, Faridabad, Haryana. We hereby notify you that your booked unit is ready and complete in all respects for taking over physical possession. Please find the attached herewith photographs of ready unit for your good reference. We request you to complete all the documentary and monetary formalities as previously communicated in Offer of Possession letter, at Faridabad office at BPTP Next Door, Sector 76, Faridabad, Haryana in order to take possession of your unit. On the day of possession, we request you to please visit the site with a copy of the Fit-out NOC and a

valid photo ID and meet our in-charge, Mr. Rahul at 9971235656, who will assist you with the requisite formalities."

A perusal of the above email clearly reveals that the respondents have, after obtaining the Occupation Certificate, issued a specific and detailed communication to the complainants regarding the readiness of the unit and invited the complainants to take physical possession. The unit number is specifically mentioned, photographs of the unit were enclosed, and the formalities for taking possession were clearly outlined. Therefore, this email dated 07.12.2024 qualifies as a valid legal offer of possession in terms of RERA, being made after receipt of the Occupation Certificate and containing all the necessary particulars. Accordingly, it is concluded that the respondents have made a legally valid offer of possession to the complainants on **07.12.2024.**

38. Authority further observes that possession of the unit should have been delivered by 08.10.2012 but it is an admitted fact that respondents had miserably failed to fulfill their obligation to deliver the possession of the unit within stipulated time. The complainants have also annexed various emails and written communications concerning the status and possession of the booked unit, dated 05.04.2017, 16.10.2018, 09.11.2020, 21.12.2020; 23.07.2021, and 28.07.2021. Now, respondents are in receipt of occupation

certificate on 28.02.2019 but possession has not been delivered to the complainants till date.

39. Now, issue which remains to be adjudicated is delay interest. Respondents had offered valid possession of unit on 07.12.2024 after receipt of occupation certificate on 28.02.2019. Complainants herein are interested in having possession of their unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondents in this case have made valid offer of possession to the complainants on 07.12.2024. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession i.e., 08.10.2012 up to the date on which a valid offer is sent to them i.e., 07.12.2024 as per above directions of the Authority. For purposes of calculation, delay interest is calculated upto 07.12.2024. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

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

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

....

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

41. 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-

1. 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;

42. 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".

43. 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., 07.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

44. 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 11.10% (9.10% + 2.00%) from the due date of possession i.e. 08.10.2012 till date of valid offer of possession i.e., 07.12.2024.

45. Authority has got calculated the interest on total paid amount from the due date of possession i.e. 08.10.2012 till date of valid offer of possession i.e.,

07.12.2024, which works out to ₹**42,47,400**/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 07.12.2024 (in ₹)
1.	332838	2012-12-28	441619
2.	302855	2013-01-22	399535
3.	60000	2018-11-05	40599
4.	1662523	2012-10-08 (deemed date of possession)	2246838
5.	332838	2012-11-21	445365
6.	27177	2016-12-03	24191
7.	600000	2018-11-05	405986
8.	333028	2018-05-12	243267
TOTAL	**3651259**		**4247400**

46. The complainants are also seeking refund of a sum of ₹131,022/- paid towards GST and refund of a sum of ₹1,52,028/- towards cost escalation charges. Authority observes that, firstly, with regard to the refund of a sum of ₹131,022/- paid towards GST, the Authority is of the considered view that the deemed date of possession in this case is 08.10.2012, and therefore, any

charges or taxes applicable as on that date are payable by the complainants. It is an undisputed fact that the Goods and Services Tax (GST) came into force on 01.07.2017, which is well after the deemed date of possession. Accordingly, the complainants are not liable to pay GST charges. The respondents have also admitted in its reply that a sum of ₹1,31,022/- was paid by the complainants on account of GST. Although the complainants have not annexed a specific receipt showing the date of payment of GST, the admission by the respondents of having received the said amount is sufficient to establish the payment. In light of this and since GST was not applicable on the deemed date of possession, the respondents are directed to refund the amount of ₹131,022/- to the complainants, which was charged on account of GST.

47. Secondly, with regard to the refund of a sum of ₹1,52,028/- paid by the complainants towards cost escalation charges, the Authority is of the view that if the respondents had delivered possession of the unit by the stipulated date of 08.10.2012, there would have been no question of cost escalation. The escalation in cost has occurred solely due to the delay in completion and handing over of possession by the respondents. Therefore, the burden of such cost escalation cannot be shifted to the complainants. In view of this, the

respondents are directed to refund the amount of ₹1,52,028/- to the complainants, which was wrongly charged under the head of cost escalation.

H. DIRECTIONS OF THE AUTHORITY

48. 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. Complainants are directed to accept the offer of possession issued by the respondents on 07.12.2024 and take physical possession of the booked units from the respondents.

ii. Respondents are directed to pay upfront delay interest as calculated in para 45 of the order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.

iii. Respondents are directed to refund ₹131,022/- paid towards GST and refund of ₹1,52,028/- towards cost escalation charges.

iv. Respondents are directed to get conveyance deed of flat of the complainants executed within 90 days of actual handover of possession of flat. In case, any amount is due on account of

stamp charges, then respondents shall inform the same alongwith letter of actual handing over of possession.

v. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e., 11.1% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

vi. The respondents shall not charge anything from the complainants which is not a part of agreement to sell.

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

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CHANDER SHEKHAR
[MEMBER]

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NADIM AKHTAR
[MEMBER]