



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	252 of 2023
Date of filing.:	07.02.2023
First date of hearing.:	21.03.2023
Date of decision.:	09.01.2025

1. Santosh Kumari, W/o Sh. Vijay Sharma
2. Vijay Sharma, S/o Late Sh. C.D. Sharma
Both R/o, House No.1945, Sector-28
Faridabad, Haryana-121008.

....COMPLAINANT(S)

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)

Complaint no.:	2507 of 2023
Date of filing.:	24.11.2023
First date of hearing.:	05.03.2024
Date of decision.:	09.01.2025

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1. Romika Gupta W/o Sh. Varun Gupta
R/o, 264, Quetta CGHS (Sri Vinayak Apt.) Plot no. 5-C
Sector-22, Dwarka, Delhi-110075
2. Neha Gupta W/o Sh. Sachin Gupta
R/o, K-22, 2nd floor, New Lajpat Nagar-3,
New Delhi-110048

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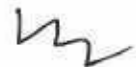
....RESPONDENT(S)

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Sh. Arjun Kundra, Counsel for the complainants in both cases
Sh. Hemant Saini, Counsel for both the respondents in both cases.

ORDER (PARNEET S SACHDEV-CHAIRMAN):

1. Captioned complaints are taken up together for hearing as they involve similar issues and pertain to the same project-'Park Elite Floors'. This



final order is being passed by taking complaint no. 252/2023 titled as "Santosh Kumari & Vijay Sharma vs BPTP Ltd & Anr." as the lead case.

2. Present complaint has been filed on 07.02.2023 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

3. 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 of complaint no. 252/2023	Details of complaint no. 2507/2023
1.	Name of the project.	Park Elite Floors, Faridabad.	Park Elite Floors, Faridabad.
2.	Nature of the project.	Residential	Residential
3.	RERA Registered/not registered	Not Registered	Not Registered
4.	Details of unit.	E-40-41-FF, 1 st floor, admeasuring 876 Sq. Ft.	PE-340-SF, 1371 sq ft

5.	Date of Allotment letter	24.12.2009	24.12.2009
6.	Date of builder buyer agreement with complainants	08.06.2010	20.03.2012
7.	Due date of possession	24.06.2013	20.03.2014
8.	Possession clause in BBA (Clause 4.1)	<p>Clause 4.1 in addendum to agreement</p> <p><i>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</i></p>	<p>Clause 5.1</p> <p><i>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</i></p>



		<p><i>Purchaser(s) within a period of 24 months from the date of execution of the floor buyers agreement OR on completion of payment of 35% of the Basic sale price along with 20%EDC and IDC by the Purchaser whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).</i></p>	<p><i>the Purchaser(s) within a period of 24 months from the date of execution of the floor buyers 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).</i></p>
9.	Total/Basic sale consideration	₹16,08,004/-	₹26,44,399/-
10.	Amount paid by complainants	₹20,21,381.74/-	₹27,59,156.41/-
11.	Offer of	04.12.2023	23.10.2023

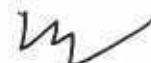
	possession.		
12.	Date of occupation certificate	09.11.2023	09.11.2023

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

4. That the complainants applied for booking an apartment in respondent's project-'Park Elite Floors, Faridabad' by paying Rs 2,00,000/- on 08.06.2009. Thereafter, unit no. E-40-41-FF (hereinafter referred to as the said unit) was allotted to the complainants vide allotment letter dated 24.12.2009.
5. That the Builder Buyer Agreement (BBA) was executed between the complainants and respondent on 08.06.2010. As per terms of the clause 4.1 of the agreement possession of the unit was to be delivered latest by 24.06.2013. However, respondent has not made any offer of possession till date. That the basic sale price of the unit was fixed at ₹16.08 lacs out of which complainants had already paid an amount of ₹ 20,21,381/- for the booked unit from year 2009-2017. Copies of payment receipts and statement of account dated 12.03.2020 issued by respondent are annexed as Annexure C-4.



6. That the complainants have made all the payments on time, the respondent have miserably delayed the construction and development of the project. The respondents have time and again extended the probable date for the completion of the project misleading the complainants. The copy of the Demand/Payment letters dated 24.06.2011 issued by the respondents specifically acknowledged the demand of 35% BSP, etc. and further especially mentions that '*that the construction work at the project is in full swing*' has been annexed as Annexure C-5. Copies of the demand/payment request issued by the respondent have been annexed as Annexure C-6. The complainants on the other hand had already made the payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the respondents. The possession of the residential floor has been due since June 2013 but till date the same has not been delivered and there is no sign of completion of the same in the near future. The respondent companies have committed gross deficiency in services and have indulged in unfair practices. The Complainants have made the booking of the residential floor for the personal residential needs and require immediate possession with the prescribed rate of interest.

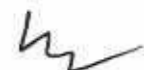


7. That the complainants are aggrieved by the conduct of the respondents and inordinate delay in the completion and development of the project and have therefore approached this Authority. Hence the present complaint.

C. RELIEFS SOUGHT

8. That the complainants seek following reliefs and directions to the respondents: -

- i. Direct the Respondents to deliver Immediate Possession of the floor of the complainants i.e. E-40-41-FF, BPTP Park Elite Floors, Parklands, Faridabad, Haryana admeasuring 876 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, on the amount already paid by the complainants from the promised date of delivery i.e. 24 June,2013 till the actual physical and legal delivery of possession; and
- iii. Pass an order restraining the respondents from charging any amount from the Complainants which do not form part of the Floor Buyer's Agreement dated 8th June 2010 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/addendums, 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 respondents filed detailed reply on 12.02.2024 pleading therein:

9. That present complaint pertains to an independent floor bearing no. E-40-41-FF, on 1st Floor admeasuring 876 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.
10. That the complainants were provisionally allotted unit no. E-40-41-FF admeasuring 876 sq. ft. vide allotment letter dated 24.12.2009 on the basis of the tentative layout plan in the project known under the name and style



of "Park Elite Floors" (hereinafter referred to as the "Project"). A copy of the Allotment Letter dated 24.12.2009 is annexed as Annexure R-2.

11. Thereafter, complainants mutually, willingly and voluntarily entered into a Floor Buyer's Agreement on 08.06.2010. On the same date, addendum was executed between the parties. As per the Clause 4.1 of addendum of FBA, the due date of possession was proposed to be handed over in 24 months from the date of execution of the Floor Buyers Agreement OR on completion of payment of 35% of the Basic sale price along with 20% EDC and IDC by the purchaser, whichever is later along with grace period of 180 days. However, said due date was subject to the incidence of force majeure circumstances and the timely payment by the complainants.
12. 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 M.C. Mehta v. Union of India, ban on construction by the Principal Bench of NGT in Vardhaman Kaushik v.

Union of India and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the Complainant and Respondent herein. 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.

13. That upon admeasuring the dimensions of the unit in June 2011, the area of unit was noted to have increased from 876 sq. ft. to 1065 sq. ft. Area of the unit is tentative and subject to change, as also agreed under the clause 1.15 of FBA. Said clause is reiterated hereunder:-

'1.15 The final super built up area of the said floor shall be determined after completion of construction of the said colony. After accounting for changes, if any, on the date of possession, the final and confirmed areas shall be incorporated in the Sale deed.'

14. That the complainants had executed an Undertaking and Affidavit to this effect, duly agreeing to the tentative nature of the unit. Copy of



undertaking is annexed as Annexure R-4. Relevant clause (i) and (ii) of Undertaking and Clause 4 of said undertaking is reiterated hereunder:-

"Clause (i) of the Undertaking:

That We understand that the Independent Residential floor bearing no. E40-41 1st Floor of Block E having a super built up area of 876 sq. ft. (81.416 sq. mtr.) approx. in the licensed colony of independent residential floors project "Park Elite Floors" situated at Parklands, Faridabad, Haryana is being allotted to me by M/s BPTP Ltd. "Company", on the basis of the tentative Layout/Building plan approved by the Govt. of Haryana/Competent Authority as on date and we hereby undertake that should there be any modification in the Layout/Building Plan of the said residential Floor Project in the future for any reason whatsoever, then we shall accept such alternative Floor/ changed super built up area at the location as may be offered/demarcated by the Company for me in the modified Layout/Building Plan.

(ii) That this Undertaking may also be deemed to be ours express permission to the Licensee(s)/Owner/Seller/Company to act on my behalf and for my best interest with regard to relocation/change of super built up area of the above Plot/Flat/Floor/Villas whenever is necessitated for any modification(s) revision(s) of the tentative Layout/Building Plan.

Clause 4 of the Affidavit:

That, while offering me the allotment we have been informed that the layout/building plan is tentative and it's super built-up area may change for any reason what so ever and if such changes takes place due to change or any modifications(s) revision(s) in the tentative layout/building plan of the said Plot/Flat/Floor/Villas during the construction/Completion of the floors then I undertake to the Company that I/We shall have no objection to the same."

15. That despite innumerable hardships being faced by the respondent no. 1, the respondent no. 1 completed the construction of the project and applied



for the Occupation Application before the concerned Authority and successfully obtained the Occupation Certificate dated 09.11.2023. Copy of the Occupation Certificate dated 09.11.2023 is annexed as Annexure R-6.

16. That the respondent no. 1 had offered the possession of unit to the complainants on 04.12.2023 asking them to come forward to take actual possession of unit after clearing the due amount. But the complainants never turned up to take the possession of the unit. Copy of letter of possession dated 04.12.2023 is attached as Annexure R-7.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS

17. Ld. counsel for complainants reiterated his submissions and pressed upon for relief of possession of booked unit along with 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., 804.30 sq. ft. He referred to his relief clause wherein he has raised objection to the charges raised by respondent on account of enhanced basic sale price, cost escalation, GST charges, VAT charges and club membership and requested to direct respondent not to charge illegal demands/taxes from complainants at the time of offer of physical possession of the floor.



18. He further argued that the respondent, after receipt of occupation certificate dated 09.11.2023 had issued an offer of possession dated 04.12.2023. It is the submission of complainants that said offer of possession is illegal because it is not accompanied by delay interest on account of delay caused in offering the possession and is accompanied with illegal demands. Further, as per the FBA dated 08.06.2010, the super built up area of the present unit/floor was 876 sq ft. The alleged Offer of Possession dated 04.12.2023 mentions the super built up area of the present unit/floor was 1065 sq ft. However, in the alleged OC dated 09.11.2023, the area of the unit is only 74.819 sq. mtr or 804.30 sq ft. on plot measuring 240.907 sq. mtrs. This clearly proves the alleged OC & offer of possession & statement of receivables & payables are illegal & against the settled principles of the RERA Act and need to applied/issued/revised afresh. Few of other concerns argued by complainant's counsel which in brief are as follows:-

- i. No provision for the compensation & delay interest, etc., to the complainants. The complainants are 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 on ground of increase in area of unit. However, there is no increase in unit of complainant as per Occupation Certificate.



- iii. Cost escalation- The reasons for the cost escalation- Rs. 53,725,08/- 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 Rs. 50,000/- as charges for the services which are non-existent till date.
- v. GST and VAT has been wrongly imposed on the complainant.

19. Ld. counsel for respondent has tendered two cheques towards delay interest bearing no. 002611 dated 11.07.2024 for an amount of Rs 9,23,036/- and bearing no. 755405 dated 08.01.2025 for an amount of Rs 9,23,037/- issued in favor of complainants. Said cheques are handed over to the ld. counsel for complainants in the Court itself. The Authority specifically asked ld. counsel for respondent as how the said amount of delay interest has been calculated. Ld. counsel for respondent apprised that calculations have been done in accordance with the provisions of RERA Act,2016 and Rules/Regulations framed thereunder and have been got vetted from a Chartered Accountant. In support, application detailing out the receivables and payable amount along with CA certificate in registry on 12.12.2024. Further, he 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 complainants. In support, he read all the issues to be decided along with relief sought at the time of hearing. In respect of difference in area of unit allotted in agreement/mentioned in offer of possession and mentioned in occupation certificate, he referred to application filed in registry on 25.09.2024 stating that final super area of the unit stands as 1065 sq. ft. Complainants herein attempts to compare the FAR and the super area which cannot be practically done as the Super area is inclusive of the FAR + area of balcony/veranda+ proportionate common areas, while the occupation certificate has been attained for FAR only. Further, he referred to clause 1.10 of agreement for the definition of 'covered area and clause 1.33 for definition of 'super area'. Thereafter, he stated that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

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



Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

20. 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 perusal 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, 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.



G. ISSUES FOR ADJUDICATION

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

If yes, the details thereof as well as applicability of certain charges imposed by the respondent.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.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-40-41-FF, on 1st Floor admeasuring 876 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 and no relief has been claimed from the Respondent No. 2. Hence, its name should be deleted from the array of parties.

Perusal of facts and submissions reveals that complainants have paid all amounts and carried out transactions with respondent no. 1 only. However, in builder buyer agreement the obligation of delivering possession to complainant was imposed upon both the respondents, i.e.



Seller (BPTP) and Confirming Party (Countrywide promoters) vide clause 4.1 of builder buyer agreement which is as follows:-

Clause 4.1 in addendum to agreement

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 buyers agreement OR on completion of payment of 35% of the Basic sale price along with 20%EDC and IDC by the Purchaser whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).

Keeping in view the foresaid clause, the request of respondent deleting name of respondent no. 2 is rejected.



F.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case is 24.06.2013 as claimed by complainant in its relief sought. The claim of the respondent regarding exclusion of delay due to *force majeure* is now being examined. The respondent has claimed that extraordinary conditions caused the delay in construction i.e Bans by NGT order, Covid outbreak etc. Details of said periods is mentioned in the table below:-

Sr. No.	Details of Ban on Construction	Duration/Time Period
1.	Order dated 19.07.2016 passed by NGT	30 days
2.	Order dated 07.11.2017 passed by Environment Pollution (Prevention and Control) Authority	90 days
3.	Order dated 01.11.2019 passed by Environment Pollution (Prevention and Control) Authority	4 days
4.	Order dated 04.11.2019 passed by Hon'ble Supreme Court in M.C.Mehta vs Union of India	102 days
5.	Nationwide lockdown in order to curb COVID-19 w.e.f 25.03.2020 to 24.09.2020 and second wave of COVID-19 w.e.f 12.04.2021 to 24.07.2021	184 +103 days=287 days
Total=513 days		

Respondent has claimed time period of 226 days (30+90+4+102 days) as force majeure on account of ban imposed by various authorities illustrated above in table. The onus squarely lies with the respondent to explain how each of the above mentioned orders of authorities (except

Covid) lies within the definition of *force majeure*. Further onus also lies upon the respondent to explain how each order directly affected its construction activities. It is the stand of respondent that force majeure conditions given above i.e Prohibitions by NGT in year 2017 and 2019, COVID-19 Pandemic etc affected the project completion.

Force majeure is a French expression which translates, literally, to “superior force”. To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to “those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control”. Black’s Law Dictionary defines Force Majeure as follows, “In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance.”

In India, it is often referred to as an “act of God”. Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term “Force Majeure” is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term “impossible” while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, “impossibility” refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of *Alopi Parshad and Sons Ltd vs Union of India*, AIR 1960 SC 588 and the landmark *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC*, the Supreme Court of India has categorically *stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.*

Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that “a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act

becomes impossible or unlawful.” It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. The Supreme Court in *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors* (2017) – 2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party’s performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties’ intent;
- Force majeure events must be unforeseeable by both parties;
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- ***Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.***

In the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted for the period of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of 6 months 25.03.2020 to 24.09.2020 was

considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. Covid was declared as a pandemic by the Government of India. If we visit the government of India websites, for example <https://covid19.india.gov.in/document-category/ministry-of-home-affairs/> it will be clear that Covid was a force majeure event and a number of national and local lockdowns took place during this period. Therefore, it is clear, that no construction work could have been carried out during this period. However, with respect to other events, the respondent has failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all. Mere pleading of force majeure conditions without fulfilling its obligations, cannot be allowed as discussed above.

Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid- for 9 months, i.e. 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021. Covid-19, however, did not in any way enhance the date of handing of possession which is 24.06.2013

as mentioned by the Complainant. Nevertheless, Covid caused subsequent delay in completion. Therefore, a time period of 9 months is to be excluded from any delay interest calculation.

F.III Objection raised by the respondent to the claim of difference in area by complainants after execution of affidavit cum undertaking dated nil.

Respondent has also taken an objection that complainants at the time of purchasing unit had conducted due diligence to their satisfaction and were acquainted with the terms and conditions therefore the application form for allotment of FBA prior to signing the same and subsequent undertaking their signatures on the same, complainants are bound by each clause of said form including clause 4 which provides that in case of change/modification in layout/building plan which will lead to change in super area of unit, the complainants shall accept said modification without raising any objection to it. Now, respondent states that relief pertaining to issue of change/increase in super area being claimed by complainants is beyond the terms of application form or FBA as same was given up by complainant vide undertaking dated nil, therefore the Authority lacks the jurisdiction to decide this issue.

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 promoter and complainants were not having equal bargaining power and respondent promoter was in a dominant position. Complainants were bound to sign on dotted lines of undertaking to retain the allotment in their favor. Said application form and undertaking is ex-



facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainants with such one-sided terms.

F.IV Objection raised by the complainant in respect of difference in area provided in offer of possession dated 04.12.2023 and occupation certificate dated 09.11.2023

Complainant's submissions is that the respondent is in receipt of occupation certificate which is for area 804.30 sq ft. whereas area of the unit as provided in offer of possession is 1065 sq. ft. So, it has been requested that respondent be directed to charge only for the area approved in occupation certificate, i.e. 804.30 sq. ft. The respondent has argued that neither in pleadings nor in relief sought, there is any mention of such plea so any relief beyond pleadings cannot be awarded to complainants. Further, ld. counsel for respondent submitted that grant of occupation certificate is a technical process being followed in consonance with provisions of Haryana Building Code and does not cover all area like stair case, lifts, lobby area etc. but complainants are liable to pay for these areas also.

Whereas, in principle there may be some merit in the argument of the respondent regarding pleadings, as above, however, the facts of each case need to be examined to come to a conclusion.

In the present case, the extra demand based on difference in area was raised by the respondent after the OC was received and the offer of

possession was made. Therefore, the offer of possession itself created an extra demand. *The Authority has to examine the Offer of Possession in totality in order to provide substantial justice.* In respect of the issue of difference in area as provided in offer of possession dated 04.12.2023, i.e. 1065 q. ft and occupation certificate dated 09.11.2023, i.e. 804.30 sq. ft. , Authority observes that respondent is entitled to charge only for the area of the unit which is actually provided to the allottee 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 allottee. 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. Therefore, the offer of possession itself mentioned excessive area, not saleable as per law.

This, therefore, is not a question of a relief claimed or pleadings made rather one of determining the correctness of the offer of possession. Hence, the respondent is directed to re-calculate the price of area of unit, based on the unit area provided in occupation certificate i.e. 804.30 sq. ft.

22. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. E-40-41-FF, admeasuring 1065 sq. ft (now area of unit as discussed in aforesaid paragraph is 804.30 sq. ft) had been allotted to complainants in the project of the respondent namely "Park Elite Floors" situated in Parklands, Faridabad, Haryana vide allotment letter dated 24.12.2009. As claimed by complainants in its pleadings and relief sought, the deemed date of possession in the case in hand is 24.06.2013.
23. Authority observes that after a lapse of 10 years, respondent has offered possession of unit on 04.12.2023 along with additional demand of Rs 7,18,028.47/- (inclusive of stamp duty charges of Rs 1,63,000/-). Complainant, has challenged the illegal demands raised along with said offer of possession. Details of such objections raised by complainants are incorporated in para 18 of this order. In this regard, it is observed that the complainants had opted for a construction linked plan and had paid more than basic sale price in the year 2012 itself. Since the delay caused is attributed to the respondent, it cannot burden the complainants with the charges/taxes etc. which were not applicable at the time of deemed date of possession. Further, objection to each demand raised by complainants is dealt with as below:-
- a. Firstly, with regard to the **increase in area from 876 sq. ft to 1065 sq. ft.**, Authority is of the view that respondent has received occupation certificate for the unit in question which is for an area



measuring 804.30 sq. ft. As discussed in aforesaid paragraphs, the respondent shall charge from complainants only for the final area 804.30 sq. ft. as per OC.

- b. Secondly, with regard to the **cost escalation charges of Rs 53,725.08/-**, it is observed that the respondent issued a letter offering possession on 04.12.2023. In the said offer, the respondent also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. 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.
- c. Thirdly, with regard to the demand raised by the respondent on account of **club charges of Rs 50,000**, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational as per the sanctioned plans. In this case, it is essential to note that the **Occupancy Certificate (OC)** for the unit has been obtained by the respondent on 09.11.2023. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainants has explicitly stated at the time of arguments that the



proposed club has not come into existence, with only a temporary club operational, if at all. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. This 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 as sanctioned will become operational at site.

- d. Fourthly, with regard to the demand raised by the respondent on account of **GST of Rs 65,908/-**, Authority is of the view that GST came into force on 01.07.2017, i.e. post deemed date of possession. So, the complainant is not liable to pay GST charges.
- e. Lastly respondent has charged a value added tax (VAT) of ₹20,641/- from the complainants, with regard to the same, Authority is of the view that VAT charged by the respondent is a government tax, therefore, the complainants are liable to pay it. As per clause 8.1 of FBA, complainants are obligated to pay VAT to the respondent.

24. Now, issue which remains to be adjudicated is delay interest. Respondent had offered possession of unit on 04.12.2023 after receipt of occupation certificate dated 09.11.2023. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of

delay caused at the rates prescribed. The respondent in this case has made valid offer of possession to the complainants on 04.12.2023. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession, i.e., 24.06.2013 up to the date on which a valid offer is sent to them after receipt of occupation certificate, i.e., 04.12.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. However, interest shall not be charged for the period of 9 months as discussed in para F.II that covers force majeure conditions.

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

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

.....

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

26. 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;

27. 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”.

28. 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., 09.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.
29. 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 11.10% (9.10% + 2.00%) from the due date of possession i.e. 24.06.2013 to date of valid offer of possession, i.e. 04.12.2023 minus the force majeure period of COVID-19 period, i.e., 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021
30. Authority has got calculated the interest on total paid amount as per detail given in the table below:

Complainant claims to have paid an amount of Rs 20,21,381.74/-. In support, receipts of Rs 20,02,865.31/- have been annexed in complaint file as Annexure C-4. For total paid amount statement of account has been annexed at page 71 of complaint. Accordingly, an amount of Rs 20,02,865.31/- is taken from receipts annexed in complaint file and

remaining/differential amount of Rs 18,516.43/- is taken from statement of account dated 12.03.2020.

In complaint no. 252/2023-

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 04.12.2023 (in ₹) excluding force majeure period				
			24.06.2013 DDOP or date of payment whichever later to 24.03.2020	25.03.2020 to 24.09.2020 Covid	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021 Covid	01.07.2021 to 04.12.2023
1.	19,82,224.31	24.06.2013	1486538	No interest	113329	No interest	534696
2.	20,641	30.06.2017	6271	No interest	1180	No interest	5568
3.	18,516.43	12.03.2020	73	No interest	1059	No interest	4995
Total:	20,21,381.74/-		14,92,882	No interest	115568	No interest	545259
			Total=Rs 21,53,709/-				

In complaint no. 2507/2023

Builder Buyer Agreement for unit no. PE-340-SF, having area 1371 sq. ft was executed between the parties on 20.03.2012. As per clause 5.1 of this BBA, possession was supposed to be delivered within 24 months from date of execution of agreement along with grace period of 180 days for applying for occupation certificate. Fact herein is that respondent did not apply for occupation certificate after expiry of 24 months, i.e. 20.03.2014. So, the

grace period of 180 days cannot be allowed to respondent as the very condition precedent for this clause to become active did not take place. Accordingly, for purpose of calculation deemed date of possession is taken as 20.03.2014. Further, possession herein was offered to complainants on 23.10.2023 along with additional demand of Rs 9,25,701/- (inclusive of stamp duty charges of Rs 2,14,000/-). However, the Occupation certificate for the unit in question with **final area as 1031.871 sq. ft** was received on 09.11.2023. It is the stand of complainants that respondent did not issue valid offer of possession till date so delay interest be awarded till actual handing over of possession. On the other hand, ld. counsel for respondent argued that at the time when offer of possession dated 23.10.2023 was made to the complainant, the unit was lying complete and occupation certificate stands applied. Further, the respondent argued that it knew that the OC had been approved and the physical copy would be received shortly. This is evident from the fact that there is hardly a gap of 15 days between the offer and occupation certificate. He requested that delay interest be awarded till grant of Occupation Certificate only.

Perusal of file reveals that complainant after receipt of offer of possession dated 23.10.2023 approached respondent vide an email dated 29.10.2023 asking the status of 'Occupation Certificate'. To which, respondent no. 1 has replied vide email dated 03.11.2023 stating that 'respondent has already applied for Occupation Certificate and same is awaited'. Thereafter,



complainants had filed present complaint on 24.11.2023 by which time the occupation certificate had already been received i.e on 09-11-2023. Respondents had filed their reply in registry on 08.07.2024 wherein details of occupation certificate along with its copy is attached as Annexure R-6.

In the case in hand, factual position is that offer of possession was made on 23.10.2023 and respondent received Occupation Certificate on 09.11.2023. There is gap of around 15 days only in receipt of Occupation Certificate. This lends credence to the argument of the respondent given above. It clearly establish the fact that respondent had applied for it prior issuing offer of possession and application for occupation certificate it itself a detailed procedure requiring various documentation formalities and site inspection by concerned authorities so it cannot be said that builder-promoter was not serious in completing construction work. The status of unit/tower were found suitable for issuing occupation certificate in year 2023 itself. Series of events clearly provides that respondent has duly completed the construction work and made serious efforts to obtain necessary approvals and certificate so time gap of merely 15 days cannot be allowed to levy interest for around one more year upon the promoter. Minor delays in obtaining of occupation certificate should not result in imposition of penalty/interest upon builders. Taking a balanced view in aforesaid circumstances, the Authority hereby concludes that hyper-technicalities cannot be allowed to vitiate the prime focus of any Authority i.e substantial

justice. This view of the Authority is fortified by that of the Honb'le Apex Court in State of Nagaland vs Lipok Ao & Ors on 1 April, 2005 (AIR 2005 SUPREME COURT 2191, 2005 (3)) as below:

"When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Therefore the complainants are entitled to receive delay interest till 09.11.2023.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 09.11.2023 (in ₹) excluding force majeure period				
			20.03.2014 DDOP or date of payment whichever later to 24.03.2020	25.03.2020 to 24.09.2020 Covid	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021 Covid	01.07.2021 to 09.11.2023
1.	17,31,933.23	20.03.2014	1157154	No interest	99019	No interest	454013
2.	3,18,520	07.05.2014	208163	No interest	18211	No interest	83498
3.	3,99,841.09	27.02.2018	92048	No interest	22860	No interest	104815
4.	3,08,862.09	02.01.2019	42080	No interest	17658	No interest	80966

Total:	27,59,156 .41		1499445	No interest	157748	No interest	723292
Total=Rs 23,80,485/-							

F. DIRECTIONS OF THE AUTHORITY

31. 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) In complaint no. 252/2023, respondent is directed to handover actual physical possession of unit within next 45 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 21,53,709/- to the complainants towards delay already caused in handing over the possession. It is pertinent to mention here that respondent has already tendered two cheques to the tune of Rs 18,46,073/- towards delay interest bearing no. 002611 dated 11.07.2024 for an amount of Rs 9,23,036/- and bearing no. 755405 dated 08.01.2025 for an amount of Rs 9,23,037/- issued in favor of complainants. Said cheques were handed over to the ld. counsel for complainants in the Court itself. So, amount of Rs 18,46,073/- be adjusted by respondent towards payable amount of delay interest.

- (ii) In complaint no. 2507/2023, respondent is directed to handover actual physical possession of unit within next 45 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 23,80,485/- to the complainants towards delay already caused in handing over the possession. It is pertinent to mention here that respondent has already tendered cheque to the tune of Rs 17,32,291/- towards delay interest bearing no. 002616 dated 11.07.2024 of Rs 8,66,146/- and bearing no. 002617 dated 11.07.2024 of Rs 8,66,145/- issued in favor of complainants. Said cheques were handed over to the ld. counsel for complainants in the Court itself during course of hearing dated 26.09.2024. So, amount of Rs 17,32,291/- be adjusted by respondent towards payable amount of delay interest.
- (iii) Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainants.
- (iv) Complainants will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them.
- (v) The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate



i.e., 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(vi) The respondent shall not charge anything from the complainants which is not part of the agreement to sell.

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

.....
CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]

****Separate order containing dissenting view is attached below:**

1. We, the undersigned have the privilege of going through the order authored by Hon'ble Chairman and are in complete agreement with the findings on all issues except exemption on account of force majeure and delay interest in captioned complaints.
2. Respondents have pleaded that deemed date of possession was subject to the force majeure events such as NGT Bans and COVID-19. Details of said events have been summarized in the table below:-

Sr. No.	Details of Ban on Construction	Duration/Time Period
1.	Order dated 19.07.2016 passed by NGT	30 days
2.	Order dated 07.11.2017 passed by Environment Pollution (Prevention and Control) Authority	90 days
3.	Order dated 01.11.2019 passed by Environment Pollution (Prevention and Control) Authority	4 days
4.	Order dated 04.11.2019 passed by Hon'ble Supreme Court in M.C.Mehta vs Union of India	102 days
5.	Nationwide lockdown in order to curb COVID-19 w.e.f 25.03.2020 to 24.09.2020 and second wave of COVID-19 w.e.f 12.04.2021 to 24.07.2021	184 +103 days=287 days
Total=513 days		

Deemed date of possession in the present case is 24.06.2013. Therefore, question arises for determination as to whether any situation or circumstances which could have happened after to this date, due to which

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the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on the part of the respondents and the various reasons given by the respondents such as the NGT order, Covid outbreak etc. are not convincing enough for two fold reasons, firstly, as respondents had claimed that NGT orders passed in year 2016,2017 and 2019 have been one of the cause for delay in construction activity of the project. It is pertinent to mention here that respondents herein are in business of real estate sector and are well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondents considering all such factors. Moreover, any event that subsequently occurred in the year 2016 could not have hampered the deemed date/construction work that was to be completed till the year 2013. Secondly, respondents himself had promised to deliver possession of unit to complainants by 24.06.2013 so any delay if has occurred during completion of apartment, the respondents cannot burden it upon complainants. Complainants are not at fault for trusting respondents by depositing the amount to respondents in return of delivery of possession of unit. Therefore, now, the respondents



cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

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 september,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.”

3. Moreover, the respondents have not provided the construction status of unit in question with latest photographs on record to support the fact that respondents have fulfilled their obligations and complainants are shying away from their duties/obligations. In the same terms, it is a mere submission by respondents that complainants did not honour demand letters on time as no demand in particular has been pin pointed to establish it. So,

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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.

4. In view of aforesaid observations, the complainants in complaint no. **252/2023** are entitled to delay interest ranging from deemed date of possession (24.06.2013) to the date of valid offer of possession, i.e offer made after obtaining occupation certificate from the competent authority (04.12.2023) in terms of Rule 15 of HRERA Rules,2017. Calculation of delay interest is incorporated in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 04.12.2023 (in ₹)
1.	19,82,224.31	24.06.2013	2300336
2.	20,641	30.06.2017	14745
3.	18,516,.43	12.03.2020	7675
Total:	20,21,381.74/-		23,22,756/-
Amount already paid by the respondents= (Two cheques to the tune of Rs 18,46,073/- towards delay interest bearing no. 002611 dated 11.07.2024 for an amount of Rs 9,23,036/- and bearing no. 755405 dated 08.01.2025 for an amount of Rs 9,23,037/- already tendered by the respondent in favor of complainants.)			Rs 18,46,073/-
Amount payable by respondents after deduction of already paid amount=			Rs 4,76,683/-

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5. In complaint no. **2507/2023**, it is pertinent to mention here that offer of possession was issued by respondents to complainants on 23.10.2023, however occupation certificate for the unit in question was received by respondents on 09.11.2023. Said offer was not a valid offer of possession as it was not supported with occupation certificate. So, the complainants were not bound to accept the same and to pay outstanding amount raised alongwith offer of possession. Respondents have taken a stand that gap of 15 days between the offer of possession and date of occupation certificate be ignored and delay interest be awarded to the complainants only upto date of occupation certificate, i.e. 09.11.2023. In this regard, it is observed that respondents have failed to substantiate their plea with proper documentary evidence and legal position prevailing under RERA Act,2016. Fact remains that respondents have not issued any possession letter to the complainants till date after receipt of occupation certificate. Complainants have got to know about receipt of occupation certificate only after filing of present complaint that too on receipt of reply. During pendency of complaint, respondents did not even bothered to issue proper offer of possession duly supported with occupation certificate. Moreover, the proviso to Section 18 of the RERA Act,2016 clearly entitles the allottee to receive delay interest till handing over of possession. Same is reiterated below for reference:-



“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”.

6. In view of aforesaid observation, the plea of respondent does not hold any merit and is therefore rejected. Respondent is directed to issue fresh offer possession to complainants within next 45 days alongwith statement of receivables and payables made in consonance with observations made in this order inclusive of delay interest plus monthly interest which is calculated in the table below:-

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 09.01.2025 (in ₹)
1.	17,31,933.23	20.03.2014	2079928
2.	3,18,520	07.05.2014	377870
3.	3,99,841.09	27.02.2018	305083
4.	3,08,862.09	02.01.2019	206641
Total:	27,59,156.41		29,69,522/-
Monthly interest commencing	27,59,156.41/-		25,173/-

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w.e.f 09.02.2025			
Amount already paid by the respondents= (Two cheques to the tune of Rs 17,32,291/- towards delay interest bearing no. 002616 dated 11.07.2024 of Rs 8,66,146/- and bearing no. 002617 dated 11.07.2024 of Rs 8,66,145/- already tendered by the respondent in favor of complainant.)		Rs 17,32,291/-	
Amount payable by respondents after deduction of already paid amount=		Rs 12,37,231/- plus monthly interest.	

7. Accordingly, parties are directed as follows:-

- i. In complaint no. 252/2023, respondents are directed to handover actual physical possession of unit within next 45 days to the complainants along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest calculated above in table mentioned in para 4.
- ii. In complaint no. 2507/2023, respondent is directed to issue fresh offer of possession within next 30 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest calculated above in table mentioned in para 6.

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- iii. Complainants are also directed to accept the possession within next 30 days of receipt of offer alongwith payment of outstanding due amount, if any.
8. With the aforesaid directions, the cases stands **Disposed of**. File be consigned to record room after uploading on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]