



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1932 of 2023
Date of filing.:	08.09.2023
First date of hearing.:	17.10.2023
Date of decision.:	23.04.2024

1. Vijay Kharwal S/o Sh. B.N. Kharkwal
 2. Sanjay Kharkwal S/o Sh. B.N. Kharkwal
 3. Sh. Ajay Kharkwal S/o Sh. B.N. Kharkwal
- All R/o Plot no.13, First Floor, backside Kanishka Residency,
Ashoka Enclave III, Sector 35, Faridabad, Haryana -121003

.....COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited through its Managing Director
R/o 28 ECE House, 1st floor, KG Marg, New Delhi- 110001
2. M/s BPTP Parkland Pride Limited
Registered office at M-11, Middle Circle Connaught Circus,
New Delhi- 110001

.... RESPONDENTS

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

Hearing: **3rd**

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

Geeta Rathee

ORDER:

1. Present complaint has been filed on 08.09.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Sector 75-89, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	PE-343-GF, admeasuring 1371 sq. ft.
6.	Date of builder buyer agreement	02.05.2012
7.	Due date of possession	02.05.2014



8.	Possession clause in BBA (Clause 5.1)	<p>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) 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 other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect</p>
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		to the building of three independent residential floors including the floor. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
8.	Total/basic sale consideration	₹25,41,599/-
10.	Amount paid by complainants	₹27,71,313.39/-
11.	Offer of possession.	None

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

3. Facts of complaint are that the complainants had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in year 2009. Complainant was allotted unit no. PE-343-GF, measuring 1371 sq. ft. Ground Floor, Park Elite Floors, Parklands, Faridabad vide allotment letter dated 06.10.2011. A builder buyer agreement was executed between both the parties on 02.05.2012. As per clause 5.1 of the agreement possession of the unit was to be delivered

Signature

within a period of twenty four (24) months from the date of execution of floor buyer agreement. From the date of execution of the agreement, the deemed date of possession works out to 02.05.2014. However, till date no offer of possession was made by respondents. Further, from booking of the unit till date, the respondents have never informed the complainants about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyer's agreement. However, the respondents have miserably failed to complete the project even after a lapse of more than ten years from due date of delivery of possession, respondent is not in a position to offer possession of the booked unit to the complainants. Basic sale price of the unit was fixed at ₹25,41,599/- out of which complainants had paid an amount of ₹27,71,313.39/-, i.e., more than basic sale consideration of the booked unit in the year 2009-2021. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.



C. RELIEF SOUGHT

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

- i. Direct the respondent to deliver immediate possession of the unit PE-343-GF admeasuring 1371 sq. ft. in BPTP Park Elite floors, Parklands Sector-75-89, Faridabad after due completion and receipt of Occupancy and completion certificates along with all the promised amenities and facilities.
- ii. Direct the respondent 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. 02.05.2014 till the actual physical delivery of possession and execution of conveyance deed.
- iii. Restrain the respondent from charging any amount from the complainants which do not form part of Floor Buyer's Agreement dated 02.05.2012 but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges, etc. or direct respondent to refund/adjust any such charges which they have already received from the complainant.



- iv. Further to set aside and quash one sided, unilateral, illegal, unfair, arbitrary contracts/undertakings/agreements etc got executed from the complainants and set aside and quash communication/letter dated 17.08.2023 issued by respondents to complainants.
- v. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

5. Learned counsel for the respondents filed detailed reply on 22.02.2024 pleading therein:
6. Respondents have admitted allotment and execution of floor buyer agreement in favour of complainants. Payment of ₹20,99,212.84/- has also been admitted at para 11 at page no. 23 of reply by the respondents. It is stated that in terms of builder buyer agreement (herein after referred as BBA) dated 02.05.2012 respondents had proposed to handover the possession of the unit within a period of 24 months from the execution of BBA along with a grace period of 180 days. He relied upon judgment passed by Hon'ble Appellate Tribunal, Chandigarh in **appeal no. 122 of 2022 titled as Emaar Mgf Land Ltd Vs. Laddi Paramjit Singh**, which states that if grace period is mentioned in the clause, the benefit of the



same be given. Although in present case deemed date of possession was also subject to force majeure conditions such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority. After lifting of the ban it took some time to mobilize the resources and begin construction of the project. Thereafter, due to the sudden outbreak of the coronavirus (COVID 19) all the activities across the country including the construction of the projects came to a halt. He submitted that force majeure on different accounts including Covid-19 outbreak for relaxation be taken into consideration as zero period for the purpose of calculation of delay possession interest. Secondly, timely payments by the complainants were essential for completion of project on time but due to number of defaulter allottees in the project including present complainant project got delayed.

7. Respondent has submitted that respondent no.1 has issued a letter dated 17.08.2023 vide which several options were given to complainant to amicably settle the matter. Complainants had failed to choose from the available option as per terms and condition of the letter dated 17.08.2023, the option of refund along with at the rate 6% simple interest was availed by the complainant.
8. Further, respondent has challenged the maintainability of the present complainant on the ground that builder buyer agreement with



complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

9. Respondents further stated that as of today, in light of non-approval of the building plans and in absence of occupancy certificate, possession cannot be handed over to complainant.
10. During course of hearing, learned counsel for the respondent offered to tender cheques of delay interest amount @ 9% within seven days before Authority which was out rightly denied by ld. counsel for the complainants.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondents.

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

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. In this regard, Authority



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

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act save 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 builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

12. Objections raised by the respondents regarding force majeure conditions.

Respondent in their reply has averred that the construction of the project could not be completed within the time period stipulated in the agreement to sell due to force majeure conditions such as NGT order and Covid-19



outbreak. In this regard Authority observes that it is a matter of record that the obligation to deliver possession within the period stipulated in the Builder Buyer Agreement i.e., 24 months from the date of execution of builder buyer agreement has not been fulfilled by respondents. There is delay on the part of the respondents and various reasons quoted by the respondents for delay such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of handing over possession was in the year 2014 whereas the NGT order referred by the respondents pertains to year 2016, i.e, years subsequent to the lapse of due date of possession therefore the respondents cannot be allowed to take advantage of the delay on his 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. ”

In view of the ratio of law laid down by the Hon'ble Delhi High Court, respondents cannot be allowed any concession on account of Covid-19 pandemic outbreak, an event that occurred subsequent to the due date of possession. Therefore, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

13. Findings on the relief sought by the complainant i.e., to direct the respondent to handover possession of booked unit along with delayed possession interest at the prescribed rate of interest as per RERA Act, 2016 from the promised date of delivery of possession i.e. 02.05.2014 till the actual handing over of legal valid possession.

- i) In the present complaint, the complainants intends 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".

- ii) Clause 5.1 of BBA that provides for handing over of possession is reproduced below:-

Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) 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 other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and 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).

It is the argument of ld. counsel for complainants that after delay of almost ten years, respondents had failed to fulfill his obligation to hand over possession of booked unit to complainants till date. Therefore, complainants relief be allowed for handing over possession of booked unit along with delay interest.

14. Perusal of file reveals that complainants had applied for booking of unit in project of respondents in the year 2009 and in total paid an amount of ₹27,59,398.22/- from the year 2009-2021 to respondents. Respondents had accepted the booking/allotment of unit in question, however, respondents have taken plea regarding delay of project due to reason beyond their control including force majeure on different ground which have already dealt with in preceding paragraphs of this order. Lastly, respondent had prayed for allowing of grace period mentioned in builder buyer agreement. As per agreement clause 5.1 promoter had agreed to handover the possession of the unit in question within 24 months from the date of execution of floor buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the unit in question. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion



certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e. immediately after completion of construction works within 24 months. The period of 24 months expired on 02.05.2014. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

15. Authority further observes that as per agreement clause 5.1 possession of the unit should have been delivered by 02.05.2014, it is an admitted fact that respondent had miserably failed to fulfill his obligation to deliver the possession of the unit till date. Now, even after a lapse of 10 years, respondents are not in a position to handover possession of the unit since respondent companies have yet not even got sanctioning of building plans then what to say for application for grant of occupation certificate. Complainants do not wish to withdraw from the project and is rather interested in getting the possession of his unit. Learned counsel for the complainants has clearly stated that complainants are ready to wait for possession of unit after completion of construction and receipt of occupation certificate. In the 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, 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 not made any



offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e., 02.05.2014 up to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "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;

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 (NCLR) 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" .. "

14. Hence, Authority directs respondent to pay delay interest to the complainant 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 10.85% (8.85% + 2.00%) from the due date of possession i.e. 02.05.2014 till the date of a valid offer of possession. Complainant has annexed receipts of an amount of Rs. 27,59,398.22/- however as per statement of accounts issued by the respondent annexed at page 77 of the complaint, amount paid by the complainant is 27,71,313.39/-. In absence of receipt of the difference amount i.e, 11,915.17/-(27,71,313.39-27,59,398.22), it will deemed to be paid on the date of statement of accounts i.e, 20.10.2021.
16. Authority has got calculated the interest on total paid amount from due date of possession i.e. 02.05.2014 till the date of this order i.e. 23.04.2024 which works out to ₹27,73,304/- and further monthly of ₹24,714/- 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 23.04.2024 (in ₹)
1.	20,33,428.54/-	02.05.2014(Due date of possession)	22,03,248/-
2.	3,54,154.69/-	17.02.2015 (payment made after due date of possession)	3,53,096/-
3.	3,23,340.99/-	08.08.2018 (payment made after due date of possession)	2,00,499/-
4.	48,474/-	20.10.2021(payment made after due date of possession)	13,213/-
5.	11,915.17/-	20.10.2021	3,248/-
Total:	27,71,313.39/-		₹27,73,304/-
Monthly interest:			₹24,714/-

During course of hearing, learned counsel for the respondents have offered to handover cheques of delay interest amount @ 9% to complainants within seven days and that too before the Authority. However, learned counsel for the complainants has categorically refuted this offer and stated that complainants are only inclined to accept the interest as per provision of RERA Act, 2016.

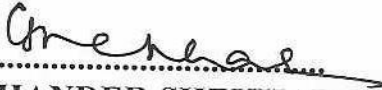
F. DIRECTIONS OF THE AUTHORITY

17. 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) Respondent is directed to pay upfront delay interest of ₹27,73,304/- (till date of order i.e. 23.04.2024) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ ₹24,714/- till the offer of possession after receipt of occupation certificate.
- (ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- (iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.



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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]

