



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2773 of 2022
Date of filing.:	27.10.2022
First date of hearing.:	22.12.2022
Date of decision.:	22.07.2025

1. Sandeep Bhutani S/o Late Sh. J.L. Bhutani
2. Vandana Bhutani W/o Sandeep Bhutani
Both R/o House No. S.H. 4/54, New Moti Nagar,
New Delhi 110015

....COMPLAINANTS

VERSUS

1. M/s BPTP Limited
Through its Managing Director
2. M/s BPTP Parklands Pride Limited
Through its Managing Director
Bothe having registered office at:
M-11, Middle Circle Connaught Circus
New Delhi 110001

....RESPONDENTS

CORAM:

Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Present: -

Mr. Narender Yadav, Counsel for the complainants
through VC

Mr. Tejeshwar Singh, Counsel for the respondents through
VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed 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 fulfil 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, details of sale consideration, 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, Parklands, Sector 77, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	Earlier allotted Unit no. H2-12A-FF, measuring 1418 sq. ft. Later shifted to PE-123-FF, measuring 1510 sq. ft
5.	Date of booking	28.10.2009



6.	Date of Allotment (in respect of unit PE-123-FF)	06.06.2012
7.	Date of floor buyer agreement(in respect of unit PE-123-FF)	23.10.2012
8.	Possession clause in floor buyer agreement (clause 5.1)	<p>Subject to Clause 14 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 or sanction of building plan, 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 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</p>



		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).
9.	Due date of possession	23.10.2014
10.	Basic sale consideration	₹ 27,79,101,72/-
11.	Amount paid by complainant	₹ 27,30,962.05/-
12.	Offer of possession.	17.09.2022

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

- Facts of complaint are that the complainants had booked a unit in the project of the respondents namely "Park Elite Floors" situated at Sector 7, Faridabad, Haryana in the year 2009. A floor buyer agreement was executed between both the parties on 27.04.2010 and the complainants were allotted floor bearing no.H2-12A-FF, measuring 1418 sq. ft. First Floor in the said project.
- However, after a gap of three years, respondents unilaterally shifted the unit of the complainants from unit no. H2-12A-FF and allotted a different unit bearing no. PE-123-FF, measuring 1510 sq.ft vide re-allotment letter dated



12.06.2012, a copy of which is annexed as Annexure C-2. It is submitted that the re-allotment of the unit was solely attributable to the respondents as the complainant never intended to change the unit.

5. A fresh floor buyer agreement was executed between both the parties on 23.10.2012 in respect of the re-allotted unit bearing no. PE-123-FF. The basic sale price of the unit was fixed at ₹ 26,51,301.72/- against which the complainants have paid a total amount of ₹ 27,30,962.05/- till date. As per clause 5.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Said period expired on 23.10.2014. Further, the 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 from the competent authority.
6. It is submitted that the complainants have never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. The copies of the demand/payment request issued by the respondents have been annexed herewith as Annexure C-6(Colly). Complainants have already made payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the respondents.
7. The arbitrariness of the floor buyers agreement dated 23.10.2012 can be derived from the clauses 7.1, and 7.2, according to which in case of delay in



payment of instalments by complainant, the respondents had the right to terminate the agreement and forfeit the earnest money and also has the right to accept the delay penalty @ 18% interest compounded quarterly.

8. It is further submitted that despite promises respondents failed to offer possession within the time period stipulated in the agreement. The respondents time and again extended the probable date for the completion of the project thereby misleading the complainants. Copy of emails issued by the respondents is annexed as A-9(colly). From booking of the floor till date, the respondents have never informed the complainants about any force majeure or any other circumstances which were beyond reasonable control of the respondents and has led to delay in the completion and development of the project within the time prescribed in the agreement. There has been an inordinate delay in delivery of possession of the floor.
9. It was only on 17.09.2022 that the respondents issued an offer of possession to the complainants. Along with said offer of possession, respondents have raised a further demand of ₹ 9,76,581.45/- along with advance maintenance charges and administrative charges to the tune of ₹ 78,792/-. Copy of offer of possession dated 17.09.2022 is annexed as Annexure C-10(colly).
10. That the Complainants immediately raised objections to the calculations thereof vide email dated 28.09.2022. The respondents replied to the said email on 03.10.2022 calling upon the complainants to have a detailed discussion on the concerns so raised. The copy of the email dated



28.09.2022 and 03.10.2022 is attached as Annexure C-11 (Colly). The discussion was held on 6.10.2022 but without any result as the respondents declined to entertain the points w.r.t calculations and advised the complainants to deposit the demanded amount as per the letter of offer of possession dated 17.9.2022.

11. 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 Hon'ble Authority. Complainants have filed the present complaint seeking possession of the floor bearing no. PE-123-FF along with interest for the delay caused in delivery of possession in terms of RERA Act, 2016 and Rules made thereunder.

C. RELIEF SOUGHT

12. In view of the facts mentioned above, the complainants pray for the following reliefs):-

- i. Direct the respondents to deliver immediate possession of the floor of the complainant i.e. PE-123-FF, Park Elite Floors, Parklands, Sector 77, Faridabad, Haryana, after due completion and receipt of Occupancy & Completion Certificate(S) along with all the promised amenities and facilities and to the satisfaction of the complainants;
- ii. Direct the respondents to pay prescribed rate of interest as per the RERA Act, on the amount already paid by the complainant from the



promised date of delivery i.e., 23.10.2014 till the actual physical and legal delivery of possession;

- 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 23.10.2012 and/or is illegal and arbitrary including but not limited to enhanced area charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charge, whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainants;
 - iv. To set aside demands raised in the offer of possession letter and tax invoice both dated 17.09.2022 and issue a fresh legal offer of possession as per the RERA Act and as per law.
 - v. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.
13. During the hearing, learned counsel for the complainants reiterated the submissions made in the complaint which are not being reproduced for brevity. He further submitted that after receiving the offer of possession dated 17.09.2022, complainants had immediately raised objection to the demands raised by the respondents on account of cost escalation charges, administrative charges, club membership charges and charges raised on account of increase in area of the unit from 1418 sq. ft to 1510 sq. ft.. The



complainants had further raised objection to the fact that the respondents had failed to adjust the component of delay possession charges admissible to them in the said statement of payable and receivable amounts. However, the respondents failed to address their genuine concerns.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 05.06.2023 pleading therein:

14. That the complainants expressed interest to purchase a floor in the project being developed by the respondent no. 1 under the name and style of "Park Elite Floor", Parklands, Faridabad. Accordingly, an application/ booking form was executed by the complainants. A copy of the booking form and receipt dated 03.06.2009 is annexed and marked as Annexure R/1.
15. Consequently, a residential independent floor bearing no. PE-123-FF, admeasuring 1047 sq. ft super area was allotted vide allotment- cum- demand letter dated 06.06.2012.
16. That thereafter, a floor buyer's agreement was executed between the complainants and the respondents on 23.10.2012. A copy of the floor buyer's agreement is annexed and marked as Annexure R4. It is pertinent to mention that vide clause 2.4 of the said agreement it was agreed between the parties that the area of the floor is tentative and subject to change.



17. Further, as per clause 5.1 of the floor buyer's agreement, possession of the unit was proposed to be handed over within a period of 24 months from the date of execution of the said agreement or sanction of building plan whichever is later, along with a grace period of 180 days.
18. It is submitted that the project in question was to be developed under self certification policy issued by DTCP, Haryana. In accordance with the the policy, respondents submitted detailed drawings and design plans for relevant buildings along with requisite fees. The respondents applied for approval of building plans and initiated development/construction work. The building plans were with held by the DTCP, Haryana. Although no objection was received from the department, however, to ensure smooth function respondents again applied for approval of building plans under regular scheme for sanctioning too. That the department vide its order dated 08.07.2015 issued clarification with regard to self certification policy but did not formally release all the plan submitted by the respondents in various building plans approval scheme. That the delay in offering possession of the allotted unit to the complainants have been occasioned due to inaction of the government agencies, hence it should be inferred that any delay caused was due to force majeure beyond reasonable control.
19. It is further submitted that the project "Park Elite Floor" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, the respondents had to encourage



additional incentives like 'Timely Payment Discounts' while on the other hand, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the respondents such as ban on construction by the Hon'ble Supreme Court of India in the case titled as "M.C. Mehta v. Union of India", ban on construction by the Principal Bench of NGT in Vardhaman Kaushik v. Union of India and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, a series of lockdowns have been faced by the citizens of India including the complainant and respondents herein. Further, during the period from 12.04.2021 to 24.07.2021, each and every activity including construction activity was banned in the State. Due to these unforeseeable circumstances and reasons beyond the control of the respondents, the construction got delayed and it took longer than expected to complete the construction of the project.

20. Regardless, the respondents made sincere efforts to complete the construction of the project and obtained an occupation certificate on 20.07.2022 in respect of the floor in question. Thereafter, respondents issued



an offer of possession to the complainants on 17.09.2022. Complainants should have accepted said offer of possession after making payment of due amounts. However, the complainants failed to take possession of the floor.

21. During the course of hearing, learned counsel for respondents admitted the basic facts that agreement was executed between parties on 23.10.2012, accordingly deemed date of possession comes to 23.04.2015, inclusive of grace period of 180 days. Occupation certificate for unit in question was obtained on 20.07.2022 and offer of possession was made to complainants on 17.09.2022, accordingly respondents is ready to pay delay interest till 17.09.2022 to complainants. Further, he stated that benefit of covid-19 period be allowed in favour of respondents since construction and development work was effected by the same. Lastly, charges alleged by complainants to be illegal were levied according to the agreement only.

E. ISSUES FOR ADJUDICATION

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

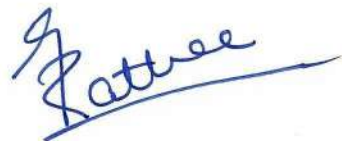
F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

23. As per facts, complainants in the captioned complaint were initially allotted unit bearing no. H2-12A-FF, measuring 1418 sq. ft. in the project being developed by the respondents namely 'Park Elite Floors' Parklands situated at Faridabad. However, after a gap of three years, respondents unilaterally



shifted the allotment of the complainants from floor bearing no. H2-19-SF to a different floor bearing no. PE-182-SF, measuring 1510 sq.ft vide re-allotment letter dated 12.06.2012. Thereafter, both parties executed a floor buyer agreement in respect of the floor bearing no. PE-123-FF on 23.10.2012 for a basic sale consideration of ₹26,51,301.72/- against which the complainants have paid a total amount of ₹ 27,30,962.05/- . It is the submission of the complainants that the respondents have delayed delivery of possession of the booked floor beyond stipulated time. Therefore, the complainants have filed the present complaint seeking possession of the booked unit along with delay interest.

24.As per clause 5.1 of the floor buyer agreement dated 31.10.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the 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 from the competent Authority. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and



to deprive the allottee of his right accruing after delay in delivery possession. Thus the contention of the respondents to calculate the deemed date of possession from the date of sanction of building plans is rejected. The agreement further provides that the 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 plot on which the floor is situated. In this regard, it is observed that respondents have not placed on record any document to show that an application had been filed with the competent authority for grant of occupation certificate within the grace period i.e from 24.10.2012 till 23.04.2013. Thus, the delay is entirely on the part of the respondents. 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. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 23.10.2014.

The respondents have averred that the delay in delivery of possession has been due to force majeure conditions. Respondents have cited circumstances beyond its control 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 and Covid-19 as for the cause of delay. In its reply respondents have cited that National Green Tribunal had put a ban on construction activities in National



Capital Region in the year 2016 thus causing delay in construction of the project in question. However, respondents have failed to attach a copy of the order of the National Green Tribunal banning the construction activities. It is noteworthy that in the captioned complaint possession of the floor should have been delivered by 23.10.2014 which is much prior to the proposed ban. Therefore, respondents cannot be allowed to take advantage of the delay on its part by claiming the delay caused due to statutory approvals/directions. Furthermore, COVID-19 outbreak hit construction activities post 22nd March 2020 i.e six years after the deemed date of possession, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondents cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by 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"

25.As per observations recorded in the preceding paragraph possession of the floor should have been delivered to the complainants by 23.10.2014. However, respondents failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainants on 17.09.2022. Said offer of possession was not acceptable to the complainants since along with said offer of possession respondents had raised a further demand of ₹ 9,76,581.45/- . These demands have been resisted by the complainants on grounds of being arbitrary and illegal. It is the contention of the complainants that despite having paid more than the basic sale consideration respondents had raised these illegal demands from them. Also at the time of issuing offer of possession respondents had failed to adjust the component of delay interest admissible to the complainants on account of delay caused in delivery of possession. Complainants had conveyed their grievances to the respondents vide email dated 28.09.2022 and allegedly held a meeting with the respondents in this regard on 06.10.2022, but received no positive response. On the other hand, respondents have submitted that the demands raised vide offer of possession were in consonance with the terms of agreement executed between the



parties and hence payable by the complainants. Authority has carefully heard the rival contentions of the both parties in this regard and observes as follows:

- a. With regard to the cost escalation charges of ₹ 1,60,108/- , it is observed by the Authority that the possession of the floor was to be delivered by the respondents by 23.10.2014. Whereas the respondents have issued an offer of possession to the complainants on 17.09.2022 after a gap of nearly 8 years. Cost escalation charges, though a mentioned clause in the floor buyer agreement, are unjust at this stage since there has been a huge delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs during the stipulated period of construction of project, but in this case, the deemed date of delivery of possession had long passed and the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a 8-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondents. Therefore, demand raised by the respondents on account of cost escalation charges shall be set aside.



- b. With regard to the demand raised by the respondents on account of club charges of ₹ 15,000/-, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational. Complainants have submitted that the proposed club has not been constructed till date. No documentary evidence has been filed on record by the respondents to establish the fact that the club is operational at site. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question, the demand raised by the respondents on account of club charges is also set aside. However, respondents will become entitled to recover it in future as and when a proper club will become operational at site.
- c. With regard to the demand raised by the respondents on account of GST, it is observed that possession of the floor in question was due on 23.10.2014 thus the charges/taxes applicable on said date are payable by the complainants. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in delivery of possession has already been attributed on the part of the respondent's. In case the respondents had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the complainants are not liable to pay



GST charges. Charges raised on account of VAT and service tax are payable to the Government. A bare perusal of clause 2.6 (k) of the agreement reveals that the complainant has agreed to pay the said charges. Therefore, the same are to be levied by the respondents and payable on the part of complainants.

- d. With regard to charges raised on account of enhanced area, it is observed that as per the statement of account the respondents have raised demand towards basic sale price proportionate to area admeasuring 1510 sq. ft. Complainants have alleged that the area of the floor had been raised from 1418 sq. ft to 1510 sq. ft. However, on perusal of page 4 of the floor buyer agreement dated 23.10.2012 it is revealed that it was agreed between the parties that the allotted floor bearing no. PE-123-FF was of 1510 sq. ft. only and not 1418 sq. ft. It is duly noted that the erstwhile allotted floor bearing no. H2-12A-F measured 1418 sq. ft.. However, both the parties had wilfully executed a fresh floor buyer agreement dated 23.10.2012 qua the floor in question PE-123-FF wherein they have both agreed that the size of the floor would be 1510 sq. ft., therefore, the complainants cannot claim refund on account of enhanced area charges.
- e. With regard to administrative charges and maintenance charges, it is observed that vide clause 2.9 and 9.4 of the agreement complainants had agreed to pay all administrative charges and maintenance charges



to the respondents. Hence, these charges are payable by the complainants.

26. Now with regard to the issue of taking over of possession, it is the contention of the respondents that the offer of possession dated 17.09.2022 was issued after completion of all development works and after receipt of occupation certificate on 20.07.2022. There was no fault with respect to the said offer and the complainants should have accepted the same. Rather the complainants have raised frivolous objections and are refusing to make payment of balance amounts. In this regard it is observed that the complainants in the present complaint have been a part of the project since 2009. Complainants have made payment to the tune of ₹ 27,30,962.05/- which is more than the basic sale consideration in respect of the booked floor to the respondents by the year 2014 itself. Complainants have shown their bonafide in respect of the booking of the floor in question having made payment of almost entire sale consideration and patiently waiting for delivery of possession. On the other hand, respondents had delayed delivery of possession of the floor by more than 8 years which is a prolonged delay. By way of the alleged offer of possession dated 17.09.2022, respondents had raised a further demand of ₹ 9,76,581.45/- which is a huge amount for someone who has already paid almost the entire amount. Further the respondents had failed to adjust the component of delay



interest admissible to the complainants for the inordinate delay caused in delivery of possession. Respondents could not have expected the complainants to pay the said amount without demanding the adjustment of delayed possession interest. When the complainants had raised their genuine concerns the respondents failed to resolve their queries and offer a affordable solution. Rather the respondents forced the complainants into making payment of the demand of ₹ 9,76,581.45/- without fulfilling its obligation towards delayed possession interest. Thus forcing the complainants to file the present complaint. Though the offer of possession dated 17.09.2022 was a valid offer issued after receipt of occupation certificate however, the complainants were unable to accept the same since the respondents failed to address their concerns. As is evident, the complainants had rightly objected to the demand of ₹ 9,76,581.45/- raised by the respondents and complainants were not bound to make payment of entire demand. Accordingly, the complainants chose to exercise remedies available as per law.

27. When an allottee/purchaser becomes a part of a real estate project, they invest their hard earned money with high hopes of having a piece of property to themselves. These hopes are generally shattered as in many cases delivery of possession of booked units/apartments etc is delayed by the promoter/builder for an inordinate amount of time. In many cases complainants are left bereft of their money as well as booked units for many



many years. Thus it is natural on the part of allottees to become apprehensive of the conduct and demands raised by the respondents. It becomes the duty of the promoter/builder to ensure proper communication with the allottees and address their concerns throughout this period. However, in most of the cases promoters make use of their dominant position and force the allottees to act as per their whims and fancies. Even in present case delivery of possession had been delayed beyond a reasonable period of time. Complainants had waited for nearly 8 years for their floor. So when the possession was offered to them, they surely were apprehensive of the huge demand and monetary obligations on the part of respondents. Accordingly they raised their grievances but were not responded to sincerely. Needless to say that the complainants had lost faith in the respondents and thus chose to safeguard their interest through law of land.

28. In light of these facts, it is observed that though the offer of possession dated 17.09.2022 was a valid offer and the floor in question was habitable along with occupation certificate, the complainants had genuine concerns with regard to payment of outstanding amount due to which they could not have accepted the same. The complainants had exercised their rights and immediately raised objections, however, to no avail. Respondents should have properly addressed the concerns of the complainants and fulfilled their obligations with respect to payment of delayed possession charges. However, when the respondents failed to fulfill the obligation a cause of



action arose against them and in favour of the complainants. The complainants had rightly objected to making payment of unjust demands and file the present complaint. Throughout the contractual relationship qua the floor, the conduct of the complainants has been genuine and true to agreement whereas the respondents have defaulted at every step of the way. Had the respondents properly addressed the concerns of the complainants then they would have had no qualm in accepting the offer of possession dated 17.09.2022 rather the complainants were forced into availing remedies through the legal route.

Therefore, the Authority deems it appropriate to observe that the complainants had rightly abstained from the offer of possession dated 17.09.2022. Thereafter, the captioned complaint was immediately filed before the Authority on 27.10.2022 and both the parties have been pursuing present litigation. Since immediately after the issue of offer of possession dated 17.09.2022 the matter has been subjudice before the Authority, therefore, in the interest of equity and natural justice, the Authority freezes the right of both parties in the year 2022 and present matter is being dealt as if in the year 2022 itself. In such light, Authority observes that the offer of possession dated 17.09.2022 is a valid offer of possession and complainants are liable to honour the demand raised by the respondents along with said offer as per the principles observed in para 25



of this order. Since the delivery of possession has been delayed beyond a reasonable period of time, therefore the complainants shall also be entitled to delay interest from the deemed date of possession i.e 23.10.2014 till the date of valid offer of possession i.e 17.09.2022 at the rate prescribed under the RERA Act. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. 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;

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"

29. Hence, Authority directs respondents 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 10.90% (8.90% + 2.00%) from from the due date of possession till the date of a valid offer of possession.
30. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of offer of possession as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till offer of possession i.e 17.09.2022 (in ₹)
1.	23,91,709/-	23.10.2014	20,62,000/-
2.	3,21,161/-	11.08.2017	1,78,773/-
3.	18,092/-	10.06.2019	6,462/-
Total:	27,30,962.04/-		22,47,235/-



31. It is pertinent to mention that in the captioned complaints, complainants have received timely payment discount from the respondents as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainants and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainants. Although it is true that this discount is an act of good will on the part of the respondents but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainants cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondents.
32. With regard to the demand raised on account of maintenance charges, it is observed that though the complainants are liable to pay said charges but given the peculiarity of the present case, the maintenance charges shall become applicable once the complainants have taken over possession of the floor in question.



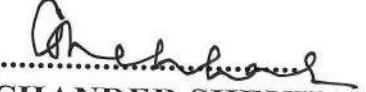
F. DIRECTIONS OF THE AUTHORITY

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

- i. Respondents are directed to pay upfront delay interest of ₹22,47,235/- (till offer of possession i.e 17.09.2022) to the complainants towards delay already caused in handing over the possession .
- ii. Respondents shall issue a fresh statement of account of payable and receivables amounts after incorporating the principles laid down in this order and adjusting the component of delay interest admissible to the complainants within 15 days of uploading of this order. Complainants shall take the possession of the floor in question within the next 15 days of issuing of statement of accounts.
- iii. Complainants will remain liable to pay balance consideration amount, if any, to the respondents as observed in this order.
- iv. The respondents shall not charge anything from the complainants which is not part of the agreement to sell.



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


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CHANDER SHEKHAR
[MEMBER]


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

