



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	3290 of 2022
Date of filing.:	13.12.2022
First date of hearing.:	02.05.2023
Date of decision.:	22.07.2025

K S Mathew Kutty s/o Late K. M Samuel  
R/o Anugarha, OPP- St. Thomas School,  
Medical Mission Junction,  
P.O. Pathanamthitta,  
Kerala-691501

....COMPLAINANT

VERSUS

1. M/s BPTP Limited  
Through its Authorised signatory Shri C.M. Sharma  
2. M/s Countrywide Promoters Private Limited  
Through its Authorised signatory Shri C.M. Sharma  
Both 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. Nihul Pratap Singh, Counsel for the complainant

Mr. Tejeshwar Singh, Counsel for the respondents through  
VC

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed 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 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 75-89, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	P7-03-GF , Block P, measuring 876 sq. ft.
5.	Date of Allotment	24.12.2009



6.	Date of floor buyer agreement	04.05.2010
7.	Possession clause in floor buyer agreement (clause 4.1)	<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 sanction of building plan,. 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</p>





		concerned authority with respect to the plot on which the three independent floors are 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).
8.	Due date of possession	04.05.2012
8.	Total sale consideration	₹16,08,004/-
9.	Amount paid by complainant	₹ 27,15,426.89/-
10.	Offer of possession.	12.06.2019

## B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that complainant in the year 2009 had booked a residential floor in the real estate project namely “Park Elite Floors, Parklands” situated at Sector 75-89, Faridabad. Complainant was allotted floor no. P7-03-GF on the Ground Floor of Block P, having a tentative super built-up area of 876 sq. ft vide allotment letter dated 24.12.2009.



4. That a floor buyer agreement qua the booked floor was executed between the complainants and the respondents on 04.05.2010. A copy of the floor buyer agreement is annexed as Annexure C-2. As per clause 4.1 of the buyer's agreement, possession of the floor was to be delivered within 24 months from the date of sanction of building plan. Thereafter, by addendum dated 27.05.2010 the clause determining the deemed date of possession was modified such that now possession of the floor was to delivered within 24 months from the date of execution of agreement or upon 35% payment of BSP + 20% of EDC/IDC, whichever is later.. Further, the respondent was allowed a period of 180 days for filing and pursuing grant of occupation certificate. The basic sale consideration of the floor was fixed at ₹ 16,08,004/- against which the complainant has already paid an amount of ₹ 27,15,426.89/- till date.
5. The terms of the buyer's agreement are wholly one-sided and unfair. While the complainant is required to pay interest @18% p.a. on delayed payments (Clause 1.9 of the agreement), the respondents are liable to pay only ₹5 per sq. ft. per month for delay (Clause 4.3 of the agreement).
6. Even after 12 years of execution of the buyer's agreement the floor in question was not ready for possession. During a site visit in January 2020, the complainant observed that electrical work, flooring, and woodwork were incomplete. These grievances were raised by the complainant via e-mail dated 14.01.2020. However, the respondent failed to address these



issues and continued to raise illegal maintenance and electricity bills. Photographs and email dated 14.01.2020 are annexed herewith and marked as Annexures C-8 & C-9 respectively. The respondents themselves admitted their default in handing over possession via e-mail dated 26.06.2020 and further committed to deliver possession by 30.08.2022 via email dated 21.07.2022, which again was not fulfilled. Copies of emails dated 26.06.2020 and 21.07.2022 are annexed herewith and marked as Annexure C-10.

7. Constrained, complainant sent a final email dated 22.08.2022 seeking possession of the booked floor and compensation for delay, which also went unanswered. Hence, the complainant approached the Authority seeking redressal of his grievances.

### **C. RELIEF SOUGHT**

8. In view of the facts mentioned above, the complainants pray for the following reliefs):-
  - i. Direct the respondents to give possession of the allotted residential floor as per terms and conditions of the buyer's agreement means after completion of all pending works including along with payment of interest as per the provisions of Section 18 of the RERA Act, 2016.
  - ii. To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for wilful default committed by them.





- iii. To impose penalty upon the opposite parties as per the provisions of Section 61 of RERA Act for contravention of Section 12, Section 14, Section 15 and Section 16 of RERA Act.
  - iv. Direct the respondents to execute conveyance deed in respect of the floor in question.
  - v. Direct the respondents to pay the compensation for mental pain, agony, harassment and depression caused to the complainant.
  - vi. Direct the officer concerned of the respondent company i.e. Director, Manager, Secretary or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of RERA Act, 2016 to be read with HRERA Rules, 2017.
  - vii. To recommend criminal action against the opposite parties for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 and 409 IPC.
  - viii. To issue directions to pay the cost of litigation.
  - ix. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint
9. During arguments, learned counsel for the complainants submitted respondents had issued an offer of possession to the complainant in the year 2019 however, said offer of possession was not valid since the respondent had not received occupation certificate qua the unit in question. Respondent



has also illegally charged EDC charges, club charges, cost escalation EEDC etc before offering a valid possession. Said demands have been paid by the complainant. Learned counsel for the complainant also submitted that the respondent is claiming relief on account of Force Majeure conditions of COVID, NGT Ban, however, respondent is not entitled to said relief as the possession was due in the year 2012. He further stated that he has filed judgements of Complaint no. 766 of 2021 and 1559 of 2023 passed by the Hon'ble Authority which are relevant to the present complaint in the registry today itself. He requested that these judgements may be perused as part of final arguments.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 01.04.2024 pleading therein:

10. That at the very outset, the respondents submit that respondent No. 2 is merely a confirming party to the floor buyer's agreement and no relief has been sought against respondent No. 2 in the entire complaint. Therefore, respondent No. 2 is neither a necessary nor a proper party to the present proceedings and deserves to be deleted from the array of parties.
11. The complainant has challenged contractual clauses that were voluntarily agreed upon by both parties prior to the implementation of the Real Estate (Regulation and Development) Act, 2016 (RERA Act). The floor buyer's







also been upheld by the Hon'ble Appellate Tribunal, Chandigarh in ***Emaar MGF Land Ltd. vs. Laddi Paramjit Singh, Appeal No. 122 of 2022.***

Accordingly, the effective due date for possession comes out to be 04.11.2012.

16. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. Reference in this regard may be taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said project became scarce. The Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was





stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018.

17. In June 2011, it was found that the super area of the floor had increased from 876 sq. ft. to 1027 sq. ft. This was duly communicated to the complainant vide letter dated 28.07.2011 and the corresponding demands were raised.
18. That possession of the floor was formally offered to the complainant vide offer of possession letter dated 26.11.2019, but the complainant has not taken possession till date. A copy of the Offer of Possession Letter dated 26.11.2019 is annexed herewith and marked as Annexure R-5.
19. That the conduct of the respondents has remained bonafide throughout. All demands were raised lawfully. Possession was offered. Force majeure events were duly documented. Therefore, the present complaint is devoid of merit and liable to be dismissed with costs.
20. During the course of hearing, learned counsel for the respondents submitted that possession has been offered to the complainant after completion of development works on 26.11.2019. Respondents have already received occupation certificate for the unit in question on 28.09.2021. Since the occupation has already been received, the complainant is entitled to receive delay interest from the deemed date of possession till the date of grant of occupation certificate and not beyond that. He submitted that he has cited the relevant judgement in support of his argument on page 2 of written submissions. He prayed that the respondent may be granted relief for a





period of 9 months as force majeure on account of COVID-19. Further as per Section 2(Z)(a), 19 (6) & 19(7) since both the complainant and respondent are at fault, the interest payable by the complainant should be adjusted in favour of the respondents.

#### **E. ISSUES FOR ADJUDICATION**

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

#### **F. FINDINGS ON OBJECTIONS OF THE RESPONDENTS**

##### **F.1 Objection raised by the respondents with regard to maintainability of complaint against Respondent no. 2**

It is the submission on behalf of the respondents that respondent no. 2, i.e., Countrywide Promoters Pvt. Ltd., is neither a necessary nor a proper party to the present complaint and the complaint is not maintainable against respondent No. 2. That the respondent No. 2 is merely a confirming party to the floor buyer's agreement executed between the complainants and Respondent No. 1 and has no independent contractual obligations, nor has any relief been sought against it by the complainants. In this regard it is observed that the submission of the respondents regarding respondent No. 2 being an unnecessary party is wholly misconceived. The floor buyer agreement has been jointly executed between the complainants, BPTP Ltd., and M/s Countrywide Promoters Pvt. Ltd. As per agreement, the seller, being respondent no. 1, 'M/s BPTP Ltd' and the confirming party, being



respondent no. 2, 'Countrywide Promoters Pvt. Ltd' as per their mutual agreement has authorised the seller to develop/construct, sell, market, deal, negotiate and execute agreement, sale deed etc, with prospective purchasers ( including present allottees/complainants) rates and terms and conditions to be determined in its sole discretion and to receive payments, issue receipts thereof in its own name. Respondent no. 2 has empowered the respondent no. 1 to act on its behalf, however, that does not mean that the respondent no. 1 has no liability towards the present complainant. The contract clearly bears the names of both respondents, thereby establishing their joint responsibility. Meaning thereby that both parties are jointly and severally liable towards the present complainants. The entire contractual relationship from the booking to receipt of payment and subsequent delivery of possession exists between both the respondents and the complainants. Hence, it can rightly be observed that respondent No. 2 is a proper and necessary party to the present proceedings, and the objection to its inclusion is liable to be rejected.

**FII. Objection regarding execution of floor buyer agreement prior to the coming into force of RERA Act,2016.**

One of the averments of respondent 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, respondent has 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 saves the provisions of the agreements made between the buyers and seller.”*





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

Execution of floor buyer agreement is admitted by the respondents. Said agreement is binding upon the parties. As such, the respondents are under an obligation to hand over possession as stipulated in the 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.

#### **G. OBSERVATIONS OF THE AUTHORITY**

22. As per facts and circumstances complainant had booked a residential floor in the project of the respondents namely "Park Elite Floors, Parklands" situated at Sector 75-89, Faridabad. Vide allotment letter dated 24.12.2009 complainant was allotted floor no. P7-03-GF on the Ground

Floor of Block P, having a tentative super built-up area of 876 sq. ft. A floor buyer agreement was executed between the complainants and the respondents on 04.05.2010. As per clause 4.1 of the Buyer's agreement, possession of the floor was to be delivered within 24 months from the date of sanction of building plan. Thereafter, vide addendum dated 27.05.2010 the clause determining the deemed date of possession was modified such that now possession of the floor was to delivered within 24 months from the date of execution of agreement or upon 35% payment of BSP + 20% of EDC/IDC, whichever is later. Further, respondents were allowed a period of 180 days for filing and pursuing grant of occupation certificate. Complainant has already paid an amount of ₹ 28,68,920.05/- against basic sale consideration of ₹ 16,08,004/-. Complainant is aggrieved by the fact that the respondents have delayed delivery of possession of the booked floor beyond stipulated period of time. Hence, the present complaint.

23. As per clause 4.1 of the floor buyer agreement dated 04.05.2010 (later modified vide addendum dated 27.05.2010) possession of the floor should have been delivered within a period of (24) months from the date of execution of floor buyer agreement or payment of 35 % of total sale consideration and EDC/IDC charges, whichever is later. A period of 24 months from the date of execution of the agreement expired on



04.05.2012. With regard to the clause of the agreement where the possession has been subjected to payment of 35% of sale amount and EDC/IDC charges it is observed that drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of possession of the unit and to deprive the allottee of his right accruing after delay in delivery possession. 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. It is a matter of fact that 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 during the grace period from 05.05.2012 till 04.11.2012. 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. Thus the deemed date of possession works out to 04.05.2012.

Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondent has attributed this delay in construction of the project due to disruption in construction





activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondent has failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondent has failed to adequately prove the extent to which the construction of the project in question got affected. Furthermore, COVID-19 outbreak hit construction activities post 22.03.2020 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, respondent 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'*

24. As per observations recorded above, possession of the unit in question should have been delivered by 04.05.2012. However, respondents failed to complete construction of the unit and deliver possession within the time period stipulated in the buyer's agreement. Thereafter, an offer of possession was issued to the complainant on 26.11.2019. It is the contention of the respondent that the complainant has failed to accept the offer of possession and further failed to make payment of the due outstanding amount. On the other hand, the complainant has submitted that the said offer of possession was unacceptable to the as the respondent had issued the same without obtaining occupation certificate and had raised further illegal demands on account of cost escalation charges, GST charges, EDC charges etc. The complainant had made payment of these charges at that time in order to save himself from the burden of interest and to secure his rights, however these demands



were not payable by the complainant since the offer of possession dated 26.11.2019 was not a valid offer of possession and also the floor was uninhabitable for possession at the time.

In this regard it is observed that admittedly the respondent had issued the alleged offer of possession to the complainant without obtaining an occupation certificate. Further even the condition of the floor was uninhabitable. Complainant had communicated his reservations to the respondent vide email dated 14.01.2020 and thereafter complainant had been relentlessly pursuing the respondents seeking possession of the floor in question. Complainant in support of his averments had placed on record copies of email communication between himself and the respondent company throughout the period from 14.01.2020 till 28.07.2022. A bare perusal of these correspondences reveal that the respondents have themselves communicated to the complainant that the respondents are endeavoring to complete the construction of the floor at the earliest. It is relevant to note that these correspondences have been exchanged between the parties after issuing of alleged offer of possession dated 26.11.2019. This simply shows that the respondents had miserably failed in completing the construction of the floor in question within the stipulated time period and also that the offer of possession had been prematurely issued to the complainants. As per record, the respondents had received





occupation certificate for the floor in question on 28.09.2021, however, respondents failed to communicate the same to the complainant. Strangely, even after receipt of occupation certificate, respondents did not issue any intimation/ demand letter to the complainant apprising him of this fact, rather in the email correspondence dated 21.07.2022 respondents have stated that the possession of the floor is expected to be delivered by 30.08.2022. Meaning thereby that there were certain deficiencies in the floor which hindered the respondents from delivering possession. Complainant could not have accepted the possession of the floor as on 26.11.2019 since it was incomplete. Thus in light of these facts, it is observed that the respondents were not in a position to offer possession of the floor in 2019 and thus the said offer of possession was not a valid offer of possession. Complainant could not have been forced to accept the same. Complainant had been rigorously pursuing the respondents seeking possession of the booked floor, however, the respondents time and again extended the proposed date of delivery of possession thus causing wrongful loss to the complainant. Even after receipt of occupation certificate the respondents did not communicate the same to the complainant. Thereafter on 16.02.2024, respondents issued a reminder/notification to the complainant that the floor was ready in all respects and that the complainant may take possession. Again the respondents did not communicate to the complainants that the occupation



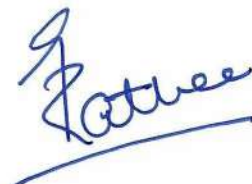
certificate has already been received on 28.09.2021. A bare perusal of this letter reveals that this letter is not a fresh offer of possession rather a continuation of the earlier possession letter as is evident from the fact that it has been specifically mentioned that “ *We request you to please take over possession of your Unit, post completion of all your documentary and financial formalities in line with your possession letter*”. Also along with said reminder letter the respondents had further burdened the complainant with holding charges and rework/maintenance cost from the date of earlier offer of possession i.e 26.11.2019. This bolsters the fact that the reminder letter dated 16.02.2024 was in continuation to the previous offer of possession dated 26.11.2019. Since the earlier offer was an invalid offer of possession, thus the reminder letter issued in its continuity itself becomes an invalid offer, therefore, the complainant again could not have accepted the same. Without proper intimations, complainant could not have offhandedly known that the unit in question is now granted occupation certificate. It was an obligation cast upon the respondent to apprise the complainant as soon as the occupation certificate was granted by the competent authority. A valid offer of possession constitutes intimation regarding status of unit, status of receipt of occupation certificate and balance payables and receivables amount in respect of the unit for which possession has been offered to ensure a smooth hand over of possession of the unit. In light of the aforementioned



facts, it is observed that a valid offer of possession has not been issued to the complainant till date.

25. The complainant has further contended that the respondents have also illegally charged EDC charges, club charges, cost escalation charges etc from the complainant before offering a valid possession. These demands had been challenged by the complainant on grounds that the same were not payable since they were to be paid at the time of offer of possession whereas the offer of possession dated 26.11.2019 was premature. In this regard it is observed that vide alleged offer of possession respondents had raised a demand of ₹ 4,24,855.79/- from the complainant. As observed in preceding paragraph the alleged offer of possession was not a valid offer therefore, the demands raised by the respondents were premature and hence non-payable by the complainant. Admittedly, the complainant had made payment of these demands to safeguard his interest in the project. The Authority has carefully examined the statement of account issued along with offer of possession dated 26.11.2019 and observes as follows:

- a. With regard to the demand of cost escalation charges, it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 04.05.2012. A valid offer of possession is yet to be made to the complainant. 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 respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a huge delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. Therefore, demand raised by the respondents on account of cost escalation charges is set aside.

- b. With regard to the demand raised by the respondents on account of GST charges, Authority is of the view that the deemed date of possession in this case works out to 04.05.2012 and charges/taxes applicable on said date are payable by the complainant. 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 respondent had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the complainant is not liable to pay GST charges, if any. It is pertinent to mention that upon perusal of receipts annexed by the complainant and statement of



account dated 13.01.2020( annexure P-5) it is observed that the complainant has not paid any amount towards GST charges. Hence, no refund is made out to the complainant.

- c. With regard to the demand raised by the respondent on account of club membership charges , Authority observes that these can only be levied when the club facility is physically located within the project and is fully operational. However, no documentary evidence has been filed on record to establish the fact that the club's facility is operational at site. Complainants have submitted that the proposed club has not been constructed till date. Respondents have not placed any document/photograph to negate the claim of the complainants. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondents will become entitled to recover it in future as and when a proper club will become operational at site.

The Authority has got calculated the interest admissible to the complainant on the amount of paid on account of cost escalation charges and Club



membership charges and the same works out to ₹ 86,686/- as per the table mentioned below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till date of order i.e 22.07.2025 (in ₹)
1.	15,387/-	18.11.2011	22,957/-
2.	18,087/-	16.03.2019	12,536/-
3.	54,686.42/-	14.12.2019	33,446/-
4.	23,600/-	14.12.2019	14,434/-
5.	5,487/-	09.01.2020	3,313/-
<b>Total:</b>	<b>1,17,247.42/-</b>		<b>86,686/-</b>

In respect of the remaining demands raised along with the alleged offer of possession, it is observed that those demands were payable by the complainant to the respondent in lieu of the booked floor at the time of offer of possession. Since the offer of possession dated 26.11.2019 was not a valid offer, hence these demands have been prematurely paid by the complainant. Therefore, for these payments, complainant will be entitled to receive interest from the date of payment till the date a valid offer of possession has been issued to him.

26. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked floor has been delayed beyond





the stipulated period of time. As per clause 4.1 of the agreement, respondents should have delivered possession of the floor by 04.05.2012. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainants on 26.11.2019. Along with said offer of possession respondents had issued a detailed statement of account of payable and receivable amounts which has been challenged by the complainant on account of several discrepancies that have been already adjudicated in para 25 of this order. Further said offer of possession was without an occupation certificate. Complainant could not have accepted said offer of possession. Thereafter, the respondents received occupation certificate on 28.09.2021, however, the same was not conveyed to the complainant. After the receipt of occupation certificate respondents have not issued a fresh offer of possession to the complainant conveying the same. Clearly, there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainant is also entitled to receive interest from the respondents on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant. So, the Authority hereby concludes that complainant is



entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 04.05.2012 till a valid offer of possession is issued to the complainant. 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(z) 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"*

27. 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.
28. Authority has got calculated the interest from due date of possession and thereafter from date of payments whichever is later (on paid amount after deducting amount paid on account of cost escalation charges and club membership charges from the total paid amount ) till the date of valid offer of possession in 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 date of order i.e 22.07.2025 (in ₹)
1.	19,08,020.31/-	04.05.2012	27,50,958/-
2.	21,072/-	15.11.2016	19,961/-
3.	2,21,108.40/-	16.03.2019	1,53,255/-
4.	2,00,041.67/-	14.12.2019	1,22,344/-





5.	55,237.90/-	14.12.2019	33,783/-
6.	1,41,000/-	16.12.2019	86,151/-
7.	47,000/-	25.09.2021	19,608/-
8.	4,700/-	16.10.2021	1,931/-
<b>Total:</b>	25,98,180.28/-		31,87,991/-
<b>Monthly Interest:</b>	25,98,180.28/-		23,277/-

29. Further, with regard to the issue of execution of conveyance deed, Authority is of the considered view that there is no impediment in execution of conveyance deed in favor of an allottee when allottee has paid the full consideration and gets the legal and valid possession. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. Thus, the respondent-promoter is obligated/duty bound under Section 17 of the RERA Act, 2016 to handover possession to the complainant and execute a registered conveyance deed in favour of the complainant-allottee.
30. Complainant vide relief sought vide relief clause ii), iii), vi) and vii) it is observed that the during the pleadings the complainant has not pressed for or made any specific averments in respect to these reliefs. Hence, the Authority deems it fit to not adjudicate the captioned relief clause.
31. The complainant is also seeking compensation for mental pain, agony, harassment and depression caused to the complainant and litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil



Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.


#### **F. DIRECTIONS OF THE AUTHORITY**

32. 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 ₹ 31,87,991/- (till date of order i.e 22.07.2025) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 23,277/- till a valid offer of possession is issued to the complainant.



- ii. The respondent shall issue a valid offer of possession along with statement of account to the complainant incorporating therein the principles laid down in this order within 15 days of uploading of this order. Complainant shall accept the offer of possession within the next 15 days of the fresh offer.
  - iii. Complainant will remain liable to pay balance consideration amount, if any, to the respondents at the time of offer of possession
  - iv. The respondents shall not charge anything from the complainants which is not part of the agreement to sell.
  - v. The respondents shall refund the amount paid on account of club membership charges and cost escalation charges along with interest as mentioned in para 25 of this order. A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017
33. **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]**