



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1918 of 2023
Date of filing.:	31.08.2023
First date of hearing.:	04.10.2023
Date of decision.:	29.07.2025

Mr. Kshitij Bhardwaj S/o Sh. P.R Bhardwaj
R/o R023, R Block, DLF Woodland Heights
Bommasandra Jigani, Bengaluru
Karnataka- 560105

....COMPLAINANT

VERSUS

1. M/s BPTP Limited
Through its Managing Director
Having its registered office at:
28 ECE HOUSE, 1st floor, KG Marg, New Delhi, 110001.
Also at- OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad 121004,
Haryana

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

....RESPONDENTS

CORAM:

Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Present: -

Mr. Arjun Kundra, Learned Counsel for the complainant
through VC

Mr. Tejeshwar Singh , Learned 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.	PE-136-FF, admeasuring 1510 sq. ft.
5.	Date of Allotment	06.10.2011



6.	Date of floor buyer agreement	16.02.2012
7.	Possession clause in floor buyer agreement	<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 to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with</p>



		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	16.02.2014
8.	Basic sale consideration	₹27,79,095/-
9.	Amount paid by complainant	₹ 28,63,527/-
10.	Offer of possession.	02.08.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that complainant had booked a floor in the project of the respondent namely "Park Elite Floors" situated at Sector 75 to 85, Faridabad, Haryana in the year 2009. Vide allotment letter dated 06.10.2011 complainant was allotted floor bearing No. PE-136-FF measuring 1510 sq. ft.
4. A floor buyer agreement was executed between both the parties on 16.02.2012. A copy of the floor buyer agreement is annexed as Annexure C-2. As per clause 5.1 of the agreement, possession of the floor was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement. Said period expired on 16.02.2014.



Further, the respondent was allowed a grace period of 180 days for filing and pursuing grant of occupation certificate from competent Authority. The basic sale consideration of the floor was fixed at ₹ 27,79,095/-.

5. As per the agreement, possession of the unit should have been handed over by 16.02.2014, however, respondent has failed to offer possession within stipulated time to the complainant. The complainants have already paid an amount of ₹ 28,63,527/- till date. Copies of payment receipts have been annexed as Annexure C-3.
6. The complainant has made all the payments before time. While the complainant has made all the payments on time, the respondents have miserably delayed the construction and development of the project. The respondents have time and again extended the probable date for completion of the project misleading the complainant. The complainants on the other hand have already made payment more than the basic sale consideration. However, the possession of the residential floor has been due since 16.02.2014.
7. Further, the arbitrariness of the floor buyers agreement can be derived from the clauses 7.1, and 7.2, 7.3 and 5.3, 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. It is



further submitted that in terms of the agreement in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the agreement whereas in case of delay in payment of instalments by complainants, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainants are aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest. .

8. 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 of more than 10 years in delivery of possession of the floor.
9. That since the booking of the floor in the year 2009 till the filing of present complaint there is no sign of an offer of possession from the respondent. Rather, respondent vide letter dated 17.08.2023 gave the complainant an illegal proposal for alternate options of floor instead of the booked floor and further forcing the complainant to choose any option within 15 days failing which the first option i.e ' Option-1- refund of paid amount along with 6% interest' would be presumed chosen by complainant. A copy of said letter is



annexed as Annexure C-4. The respondent is forcing the complainant to accept arbitrary and unilateral terms.

10. Therefore, the complainant has filed the present complaint seeking possession of the floor bearing no. PE-136-FF along with interest for the delay caused in delivery of possession in terms of RERA Act and Rules therein.

C. RELIEF SOUGHT

11. 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-136-FF Park Elite Floors, Parklands, Sec 75 to 89, Faridabad, Haryana, admeasuring 1510 sq. ft. after due completion and receipt of Occupancy & Completion Certificate(S) along with all the promised amenities and facilities and to the satisfaction of the complainants; and
- ii. Direct the respondents to pay prescribed rate of interest as per the Act, on the amount already paid by the complainant from the promised date of delivery i.e. 16.02.2014 till the actual physical and legal delivery of possession and further, execute conveyance/sale deed; and
- iii. Pass an order restraining the respondents from charging any amount from the complainants which do not form part of the floor buyer's agreement dated 16.02.2014 and/or is illegal and arbitrary including



but not limited to enhanced charges, cost escalation charges and unilateral increase in basic sale price of the floor delay penalty charges, GST charges, VAT charges, Club membership charge, illegal maintenance charges, interest levy of holding charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainants, further refund/adjust ₹ 2,668.59/- illegally charged as delayed payment interest;

- iv. further to set aside & quash one sided, unilateral, illegal, unfair, arbitrary contracts/ undertakings/ agreements/ addendum, etc got executed from the complainant, and further, set aside & quash the communication/letter dated 17.08.2023 (Annexure C-4) issued by the respondents to the complainant.
- v. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;

12. During arguments, learned counsel for the complainants submitted that 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 the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. Respondents were bound by terms and conditions of the agreement and were to deliver possession of the floor within time prescribed in the floor buyers



agreement, however, they have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. He submitted that after a lapse of more than eleven years from deemed date of delivery of possession, respondents had offered possession of the booked floor to the complainants on 12.01.2024. Nevertheless, said offer was not legal for two fold reasons; firstly, offer was made before obtaining occupation certificate. Secondly, it was not in consonance to the terms of floor buyer agreement and was also accompanied with illegal demands. To prove his contention, counsel referred to page no. 97 of present complaint i.e statement of account issued with the offer of possession dated 12.01.2024. Further, learned counsel for complainants put forth following arguments challenging various demands mentioned in above stated Statement of account:

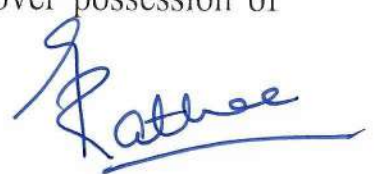
- i. As per said statement of account, respondents are charging cost escalation charges, Service Tax, Value Added Tax and GST along with club membership charges. In this regard counsel for complainants stated that club charges cannot be charged by respondents since till date there is no club at site. Further, cost escalation charges cannot be charged since respondents were bound to deliver possession by year 2013 itself, hence any cost escalation due to delay in handing over possession cannot be imposed upon complainants. Lastly, with regard to taxes stated above, the complainants's counsel submitted that all the three charges cannot be charged together and further effect of GST has



come into force on July 2017 and as per terms of floor buyer agreement deemed date of possession comes to year 2013, meaning thereby if respondent had delivered the possession on time, GST could never be levied upon complainants. Therefore, all the above charges raised by respondent are illegal and arbitrary.

- ii. Further, in said statement, final super area is mentioned as 1047 sq.ft (97.27 sq.mtrs) for basic sale price of ₹ 19,54,337.94/-, whereas, as per page 6 of floor buyer agreement area allotted to complainants was 876 sq.ft. (81.416 sq.mtrs), for which basic sale price was fixed for 16,08,004/-. Therefore, it could be clearly seen that there is unilateral increase in the area accordingly, basic sale price was also increased without complainants consent. He further stated that increased area is also a sham transaction shown by respondents. Since, as per occupation certificate obtained on 05.06.2024, respondents had obtained occupation certificate for the area of 794.75 sq. ft. which is actually lesser than the area for which floor buyer agreement was executed between parties.

13. Learned counsel for complainant further stated that till date, respondents have neither handed over actual physical 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 for seeking relief of handing over possession of



booked floor after due completion and receipt of occupation certificate along with delay interest as prescribed as per RERA Act, 2016 from the deemed date of possession i.e. 16.02.2014 till the actual physical delivery of possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

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

14. That the complainant expressed his 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 complainant. A copy of the booking form dated is annexed as Annexure R1.
15. That consequently, a residential independent floor bearing no. PE_136-FF, admeasuring 1510 sq. ft super area was allotted vide allotment letter dated 06.10.2011. Copy of allotment letter dated is annexed as Annexure R2.
16. That thereafter, a floor buyer's agreement was executed between the complainant and the respondents on 16.02.2012. A copy of the floor buyer's agreement is annexed as Annexure R3. It is pertinent to highlight that it was agreed between the parties that the area of the floor is tentative and subject to change, as per clause 2.4 of the said agreement.



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. At this stage, it is submitted that the grace period has also been considered by Ld. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. Vs Laddi Paramajit Singh Appeal No. 122 of 2022.**

18. Hence, as per the aforementioned clauses, the subjective due date comes out to 16.08.2014. That however, this due date was subject to force majeure conditions and timely payment of instalment by the complainant. That the construction of the floor in question was deeply affected by such circumstances, the benefit of which is bound to be given to the respondents in accordance with clause 5.1 and 13 of the floor buyer agreement.

19. 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.

Additionally , the construction of the project was marred by the Covid-19 pandemic, 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 respondent 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.

20. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan.



21. That the respondent no. 1, vide letter dated 17.08.2023, proposed the complainant alternate options. That due to the unforeseen circumstances, as detailed above, the construction of the project was severely affected and hence the respondent No. 1, acting in its bonafide conduct, gave several options to the complainant for amicable settlement of the grievances of the complainant towards the unit. That the complainant was given options of refund along with 6% simple interest along with two other options to choose from those available options. It is pertinent to mention that the parties had been in the process of settlement talks. Copy of proposal of alternate options letter dated 17.08.2023 and email dated 05.09.2023 are annexed as ANNEXURE R7(Colly).
22. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the FBA dated 16.02.2012, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.
23. During the course of arguments, learned counsel for the respondent submitted that floor buyer agreement was executed between parties on 16.02.2012 for unit bearing no. PE-136-FF, situated in Park Elite Floors, Parklands,



Faridabad. As per clause 5.1 of agreement, due date of possession was within 24 months from date of execution of agreement along 180 days grace period for obtaining occupation certificate, which comes to 16.08.2014. He admitted that there has been a delay in handing over of possession and agreed that the respondent-promoter is ready to pay the delay charges to complainant subject to consideration that respondent is liable to pay delay charges from deemed date of possession i.e. 16.08.2014 till offer of possession or till date of obtaining occupation certificate for the floor in question whichever is later. In the present case, the respondent has issued an offer of possession to the complainant on 02.08.2024 for the floor in question after completing the construction of the project and after obtaining occupation certificate on 05.06.2024.

24. Further, the respondent's counsel prayed for relaxation in the deemed date of possession on account of force majeure event including 9 months due to Covid-19 outbreak. Lastly, counsel for respondent alleged that offer of possession was made in August 2024 after obtaining occupation certificate in July 2024, however it is the complainant who is at default by not accepting the offer of possession, therefore, complainant is liable to pay delayed payment interest to the respondent as per Section 19(6) and 19(7) read with 2(z) of the RERA Act.



25. With regard to the objection raised by the complainant to the area of the floor, learned counsel for the respondent has filed an application dated 22.07.2025 submitting there in that:

- a. The total saleable area of the residential floor is 1510 sq. ft., the same is an admitted fact in the complaint as well. This saleable area corresponds to the super area of the residential floor in question. It was further clearly stipulated in the agreement that the allottee shall be liable to pay as per the super area. Relevant clauses in this regard are clause 1.33, 2.3 and 2.4. Upon completion of construction, the super area was measured and it came out to be 1510 sq. ft. Accordingly, in the offer of possession it has been mentioned that the super area of the unit is 1510 sq. ft.
- b. On the other hand, the occupation certificate reflects the FAR (Floor Area Ratio) area i.e. 109.756 sq. mt. (1181.4 sq. ft.) (excluding mumty area mentioned in the occupation certificate) as per the Haryana Building Code, 2017. There is no discrepancy in the area of the residential floor. In simple words, the super built-up area of the residential floor is 1510 sq. ft., whereas the FAR area of the residential floor is 1181.4 sq. ft.



(excluding mummy area mentioned in the OC). The residential floor has been sold on the basis of the super area, and consequently, this is also the area reflected in the agreement and the Offer of Possession. T On the other hand, the occupation certificate is issued as per Haryana Building Code, 2017 which reflects the FAR.

Thus, it is clear

26. The entire claim of the complainant is misguided. The complainant is erroneously claiming that he is being conveyed much lesses sre whilst being compelled to pay for 1510 sq. ft. Fact of the matter is that respondent has issued an offer of possession to the complainant on 02.08.2024 as per the area agreed between the parties and after obtaining valid occupation certificate. It is the complainant who has failed to come forward and accept said offer of possession.

E. REJOINDER FILED BY COMPLAINANT

Complainant has filed a rejoinder dated 27.08.2024 to the reply filed by the respondent submitting therein that:

27. The total sale price of the floor in question is ₹ 32,02,633.60/- and the complainant has already made a payment of ₹ 28,63,527.50/- to the respondents till date.



28. Further the alleged offer of possession dated 02.08.2024 and statement of receivables and payables issued by the respondents to the complainant was illegal, non-est, pre-mature and against the settled principle on the RERA Act.

29. That as per the floor buyer agreement dated 16.02.2012 the plot area was 250.838 sq. mtrs. and the super built up area was 1510 sq. mtr. Further as per the alleged offer of possession dated 02.08.2024 the plot area was 232.44 sq. mtr and super built up area was 1510 sq. mtr. However, in the alleged occupation certificate dated 05.06.2024 the plot area was 232.750 sq. mtr and area of the floor was only 109.75 sq. mtr. This clearly proves that the alleged occupation certificate is for a smaller area and thus the offer of possession and statement of account are illegal.

30. The complainant has several objections to the raising/issuing of the alleged offer letter dated 02.08.2024, the first and foremost being that the same does not include provision for the compensation & also the delay interest is wrongly calculated as per the Rera Act, etc., to the complainant for the delay of so many years. This is despite the fact that the respondent companies have themselves, admittedly delayed in the completion of the project. The objections in respect of the offer of possession are mentioned as below:

- a. No provision for the compensation & also the delay interest admissible to the complainant has been wrongly calculated by the respondents. The



complainant is entitled to the prescribed rate of interest as per the Act for the period of delay.

b. There is a unilateral increase in the total sale price of the unit i.e as per the agreement the total sale price was fixed as ₹. 32,02,633.60/- whereas as per the Statement of Account dated 16.05.2023 (annexed at Pg. no. 72 of the complaint) the area is illegally enhanced to ₹. 36,37,179.04/- .

c. The respondents have raised a demand of ₹ 1,60,180.80/- as cost escalation charges. However, the reasons for the cost escalation is solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same .

d. Club Charges- The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The respondents cannot collect ₹. 15,000/- as charges for the services which are non-existent till date.

e. That there is no occupation certificate and completion certificate attached. That further the alleged OC dated 05.06.2024 (supplied by the respondent only after



repeated emails sent by the complainant) is for a smaller area of the floor.

f. Illegal undertaking/indemnity attached with the alleged offer of possession.

g. GST has been wrongly imposed on the complainant.

Further, levy of Service Tax, Vat & GST altogether is illegal.

h. Also the respondents are charging illegally & arbitrary for the area & super-area of the present floor.

31. During hearing, learned counsel for the complainant further submitted that the respondents have purported a sham transaction with regard to the unilateral increase in area of the floor. As per occupation certificate the area of the floor in question is reflected as 109.756 sq. ft. whereas the respondents are charging basic sale consideration from the complainant for an area of 1510 sq. ft. As is evident, the respondents are charging from the complainant for an area more than the actual area at site. Thus the respondents be directed to recalculate the basic sale consideration proportionate to area of 109.756 sq. ft.

F. ISSUES FOR ADJUDICATION

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



G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

33. 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 06.10.2011 complainants were allotted floor no. PE-136-FF admeasuring 1510 sq. ft. A floor buyer agreement was executed between the complainants and the respondents on 16.02.2012. As per clause 5.1 of the agreement, possession of the floor was to be delivered within a period of 24 months from the date of execution of the said agreement. Further, the respondents were allowed a period of 180 days for filing and pursuing grant of occupation certificate. Complainant has already paid an amount of ₹ 28,63,527/- against basic sale consideration of ₹ 27,79,095- to the respondents in lieu of booked floor. Complainant is aggrieved by the fact that the possession of the floor in question has been inordinately delayed and even now the respondents are not in a position to deliver possession of a floor as per the terms agreed between the parties. Hence, the present complaint.

34. Admittedly delivery of possession has been delayed beyond the stipulated period of time. Complainant had booked the floor in question in the year 2009. As per clause 5.1 of the floor buyer agreement possession of the floor should have been delivered within a period of twenty four months from the date of execution of floor buyer agreement. Said period expired on



16.02.2014. 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. 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 16.02.2014.

The respondents have averred that the delay in delivery of possession has been due to various force majeure conditions explicitly mentioning 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, respondents have failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondents have further failed to adequately prove that the extent to which the construction of the project in question got affected. Furthermore, respondents have submitted that the construction of



the project got severely affected due to COVID-19 outbreak. It is observed that the Covid-19 pandemic 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 as an excuse for non-performance of contract for which deadline was much before the outbreak itself”

35. As per observations recorded in the preceding paragraph possession of the floor should have been delivered to the complainant by 16.02.2014. 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 02.08.2024 after receipt of occupation certificate on 05.06.2024. Said offer of possession was not acceptable to the complainant as the approved area of the floor in the occupation certificate was much lesser than the area mentioned in the alleged offer of possession. Also, along with said offer of possession respondent had raised a further demand of ₹ 7,73,651/- . These demands have been resisted by the complainant on grounds of being arbitrary and illegal. Authority has carefully heard the rival contentions of the both parties and observes as follows:

a) With regard to the cost escalation charges of ₹ 160,180/- , it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 16.02.2014. Respondents have issued an offer of possession to the complainant on 02.08.2024 after a gap of more than 10 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 respondent, making it unfair to pass the burden of escalated costs onto the



complainants. The complainant, having already endured a 10-year 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 shall be set aside.

b). With regard to the demand raised by the respondent 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. In this case, it is essential to note that the Occupancy Certificate (OC) for the floor has been obtained by the respondent on 05.06.2024. However, no documentary evidence has been filed on record to establish the fact that the club is operational at site. Complainant has 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.

c) With regard to the demand raised by the respondents on account of GST, Authority is of the view that the deemed date of possession in this case works



out to 16.02.2014 and 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 complainant is 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 1.32 of the agreement reveals that the complainant has agreed to pay the said charges. Therefore, the same are to be levied by the respondent and payable on the part of the complainant.

36. The main contention between the parties is with regard to difference in area of the booked floor as provided in the buyer's agreement dated 16.02.2012/ in the offer of possession dated 02.08.2024 as against the final area of the floor mentioned in the occupation certificate dated 05.06.2024. As per facts, the area of the floor in the agreement and the offer of possession has been mentioned as 1510 sq. ft whereas in the occupation certificate it has been mentioned as 109.756 sq. mt. (1181.4 sq. ft.) It is the contention of the complainant that the occupation certificate qua the said floor has only been approved for an area of 109.756 sq. mt. (1181.4 sq. ft.) which is lesser than the area agreed between the parties i.e 1510 sq. ft. In rebuttal, it has been submitted by the learned counsel for respondents that the residential floor is sold on the basis of super area which



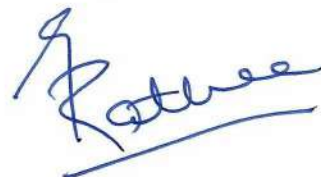
in this case is 1510 sq. ft only, and consequently, this is the area reflected in the floor buyer agreement and offer of possession dated 02.08.2024. On the other hand, occupation certificate reflects the floor area ratio admeasured as per the Haryana Building Code 2017 which does not cover all areas like stair case, lifts, lobby area etc. but the fact remains that the complainant is liable to pay for these areas also. In the present case, the area of 109.756 sq. mt. (1181.4 sq. ft.) mentioned in the occupation certificate does not mean that there has been any change/reduction in the area of the floor, it is simply that in the occupation certificate, only the FAR is reflected. The super area of the floor in question is 1510 q. ft. and there is no change/ reduction in the same.

The chief question in the aforementioned arguments is that as to what is the final area of the floor which is chargeable from the complainant by the respondents. In this regard it is noted that as per the floor buyer agreement executed between the parties, the area of the floor was 1510 sq. ft. however, ultimately as per the occupation certificate dated 05.06.2024, the area of the floor comes to 1181.4 sq. ft. In light of this fact, the Authority observes that respondents are entitled to charge only for the area of the floor which is actually to be provided to the allottee at the time of handing over of possession. Any area over and above the approved area mentioned in the occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code,2017 which clearly establishes that lift, mumty, balcony, parking , services and storages shall not be



counted towards FAR. Any area beyond FAR is not a saleable area of the project. However, cost of construction of all such structures which is not included in FAR can be burdened upon total cost of the unit by the respondent but; cannot be charged independently making it a chargeable component of the unit. Hence, the plea of respondents deserves to be rejected and respondents are directed to re-calculate the price of the floor according to the final area of the floor i.e 109.756 sq. mt. (1181.4 sq. ft.).

37. In nutshell, in present complaint, the delivery of possession of the floor booked by the complainant had been delayed beyond the stipulated date of possession i.e 16.02.2014. A valid offer of possession was issued to the complainant on 02.08.2024 after receipt of occupation certificate on 05.06.2024. 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 35 of this order. Admittedly 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 respondent 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 the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 16.02.2014 till the date of valid offer of possession i.e 02.08.2024. 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"

38.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 10.90% (8.90% + 2.00%) from from the due date of possession till the date of a valid offer of possession i.e 02.08.2024.

39. 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 i.e 02.08.2024 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 02.08.2024 (in ₹)
1.	25,09,065.36/-	16.02.2014	28,63,009/-
2.	25,953/-	17.12.2016	21,592/-
3.	2,97,622/-	04.09.2017	2,24,419/-
4.	30,887.14/-	16.05.2023	4,105/-
Total:	28,63,527.50/-		31,13,125/-




40. It is pertinent to mention that in the captioned complaint, complainant has 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 complainant 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 complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainant cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainant 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 respondent.

H. DIRECTIONS OF THE AUTHORITY

41. 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 ₹ 31,13,125/- (till date of offer of possession i.e 02.08.2024) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.
 - ii. The respondents 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 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 complainant which is not part of the agreement to sell.
42. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]