



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1917 of 2023
Date of filing.:	31.08.2023
First date of hearing.:	22.11.2023
Date of decision.:	13.05.2025

Ashish Powari S/o Sh. C. D. Powari
House No. 111-B, Sunlight Colony II
DDA Flats Ashram,
New Delhi- 110014

....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 Parkland Pride Limited
Through its Managing Director
Having its registered office at: M-11, Middle
Circle Connaught Circus New Delhi 110001

....RESPONDENTS

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Complaint no.:	1924 of 2023
Date of filing.:	31.08.2023
First date of hearing.:	22.11.2023
Date of decision.:	13.05.2025

1. Shyambir Singh S/o Sh. Girraj Singh
2. Sheela Devi W/o Sh. Shyambir Singh
Both resident of 1134 First Floor,
Maruti Kunj,
Bhondasi, Gurgaon, Haryana-122102COMPLAINANTS

VERSUS

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Circle Connaught Circus New Delhi 110001
.....RESPONDENTS

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

Present: - Mr. Arjun Kundra, Counsel for the complainants
 through VC (in both complaints)
 Mr. Tejeshwar Singh, Counsel for the respondent through
 VC(in both complaints).

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaints both dated 31.08.2023 have been filed by complainant(s) 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.
2. Both the captioned complaints are being taken up together as they pertain to the same project of the respondent and facts and grievances involved are similar and being decided taking Complaint No. 1917 of 2023 as the lead case.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Sector 75-89, Faridabad.
2.	Nature of the project.	Residential

Dr. Geeta Rathee

3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	H2-33-FF, admeasuring 1418 sq. ft. later changed to PE- 118- FF admeasuring 1510 sq. ft. vide re-allotment letter dated 11.06.2012
5.	Date of Allotment	25.05.2009
6.	Date of floor buyer agreement	20.11.2012
7.	Due date of possession	20.12.2014
8.	Possession clause in BBA (Clause 5.1)	<p>Clause 5.1</p> <p><i>Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the</i></p>



		<p><i>Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of 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 24 months, for filing and pursuing the grant of OC 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 Purchaser(s) wearing the purchaser(s) will be granted 30 days period to complete the formalities and payment of amount demanded.</i></p>
8.	Basic sale consideration	₹26,51,301.72/-
9.	Amount paid by complainant	₹ 27,15,116.55/-
10.	Offer of possession.	01.08.2024

Rathee

B. FACTS OF THE LEAD COMPLAINT

4. 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 by paying a booking amount of ₹ 3,00,000/-. Complainant was allotted floor no. H2-33-FF admeasuring 1416 sq. ft. vide allotment letter dated 25.05.2009.
5. That after a few years, respondent unilaterally changed the allotment of the complainant from earlier booked floor bearing no. H2-33-FF to a different floor bearing no. PE-118-FF admeasuring 1510 sq. ft. Respondent also issued a re-allotment letter dated 11.06.2012 to the complainant qua the floor PE-118-FF. A copy of the re-allotment letter is annexed as Annexure C-2.
6. That a floor buyer agreement qua the re-allotted floor bearing no. Pe-118-FF was executed between the complainant and the respondent on 20.11.2012. A copy of the floor buyer agreement is annexed as Annexure C-4. 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. Said period expired on 20.11.2014. 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 ₹ 26,51,301.72/- against which the complainant has already paid an amount


Ratanee

of ₹ 27,15,116.55/- till date. Copies of payment receipts have been annexed as Annexure C-4.

7. The complainant has never defaulted in any installment. That while the complainant 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 complainant on the other hand has already made the payment of the majority of the sale consideration. The possession of the residential floor has been due since 20.11.2014.
8. It is submitted that from booking of the floor till date, the respondents have never informed the complainant 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 9 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-6. The respondent is forcing the complainant to accept arbitrary and unilateral terms.

10. Therefore, complainant has filed the present complaint seeking possession of the floor bearing no. PE-118-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 complainant prays for the following reliefs):-

- i. Direct the respondents to deliver immediate possession of the floor of the complainant i.e. PE-118, First Floor, BPTP 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 complainant; 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 possession/delivery i.e., 20th Nov 2014 till the actual physical and legal delivery of possession and further, execute conveyance/sale deed;
- iii. Pass an order restraining the respondents from charging any amount from the complainant which do not form part of the floor buyer's



agreement dated 20th Nov 2012 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 unit, delay interest/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 complainant; 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-6) issued by the respondents to the complainant;

- iv. 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 the course of arguments, learned counsel for the complainant submitted that respondent has issued an offer of possession in respect of the floor in question to the complainant on 01.08.2024 after a delay of nearly 10 years from the deemed date of possession i.e 20.11.2014. Said offer of possession was accompanied with a statement of payable and receivables amounts. He further submitted that as per the agreement executed between the parties and the offer of possession, the super built up area of the present


Rathee

floor was 1510 sq. ft., however, in the occupation certificate dated 05.06.2024, the area of the floor is only 1181.40 sq. ft. It is evident that the alleged occupation certificate is for a lesser area than the area promised as per the agreement. Learned counsel for the complainant has further alleged that the respondent has raised illegal demands which are against the settled principles of the RERA Act vide statement of payables and receivables issued with said offer of possession stating therein that;

- i. Respondent has wrongly calculated the interest payable to the complainant for the delay caused in delivery of possession. The complainant is entitled to prescribed rate of interest as per the RERA Act for the period of delay.
- ii. There has been a unilateral increase in total sale price of the floor from ₹ 30,56,212.12/- as per the Statement of Account dated 23.10.2013 (placed at Pg. no. 90 of the complaint) and now illegally enhanced to ₹. 34,83,147.98/-
- iii. Respondent has illegally charged escalation charges of ₹1,60,180.80/- from the complainant. However, the reasons for the cost escalation- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.
- iv. Club Charges- The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The



respondents cannot collect Rs. 15,000/- as charges for the services which are non-existent till date.

- v. Illegal undertaking/ indemnity attached with the alleged offer of possession (Annexure C & Annexure D) which has not even been signed by the complainant.
 - vi. GST has been wrongly imposed on the complainant. Further levy of Service Tax, Vat & GST altogether is illegal.
 - vii. Charging illegally & arbitrarily for the area & super-area of the present unit.
13. Learned counsel for the complainant prayed that direction be issued to the respondent to deliver possession for a floor admeasuring as per the area agreed between the parties vide floor buyer agreement dated 20.11.2012 along with delay interest for the delay caused in delivery of possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

14. Learned counsel for the respondent filed detailed reply on 04.03.2024 pleading therein:
15. That the complainant expressed his interest to purchase a unit 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 and the complainant was given an inaugural discount of Rs 1,27,800 and a timely payment discount of Rs



1,04,028.26 has been given to the complainant by the respondent no. 1. A copy of the booking form dated 25.05.2009 is annexed and marked as Annexure R1.

16. That consequently, a residential independent floor bearing no. H2-33-FF, tentatively admeasuring 1418 sq. ft super area was allotted on the basis of the tentative layout plan. That later the unit of the complainant was re-allotted from unit H2-33-FF to PE-118-FF tentatively admeasuring 1510 sq. ft with the consent of the complainant. The copies of allotment letter dated 24.12.2009 and re-allotment letter dated 11.06.2012 are annexed as Annexure R2(Colly).
17. That thereafter, a floor buyer's agreement was executed between the complainant and the respondent on 20.11.2012. A copy of the floor buyer's agreement dated 20.11.2012 is annexed and marked 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 2.2 of the said agreement.
18. 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.**

19. Construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent 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 etc. After lifting of the ban it took some time to mobilise the resources and begin construction of the project. . 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, series of lockdowns have been faced by the citizens of India including the Complainant and Respondent herein. Otherwise, construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.
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 R6(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 20.11.2012, 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



20.11.2012 for unit bearing no. PE-118-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 20.04.2015. 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. 20.04.2015 till offer of possession or till date of obtaining occupation certificate for the unit whichever is later.

24. He submitted that in the present case, the respondent has issued an offer of possession to the complainant on 01.08.2024 for the floor in question after completing the construction of the project and after obtaining occupation certificate on 05.06.2024. He further stated that an amount of ₹ 25,47,625/- towards delayed possession charges stands credited in the fresh statement of account issued to the complainant along with offer of possession.
25. Respondent 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.

26. Learned counsel for the respondent further submitted that the complainant has objected to the area of the floor in question alleging that the that while an area of 1510 sq. ft. was mentioned in the floor buyer agreement and offer of possession, but an area of only 1181.4 sq. ft. is mentioned in the occupation certificate. Learned counsel for the respondent apprised that 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. 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. Thus, 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 mumty area mentioned in the OC). The residential floor has been sold on the basis of the super area, and consequently, this is the area reflected in the agreement and the Offer of Possession. On the other hand, the occupation certificate is issued as per Haryana Building Code, 2017 which reflects the FAR. Respondent has also


Rathee

filed a detailed explanation of the difference in area of floor allotted in agreement/mentioned in offer of possession and as mentioned in occupation certificate vide application dated 16.12.2024.

27. The entire claim of the complainant is misguided. Fact of the matter is that respondent has issued an offer of possession to the complainant on 01.08.2024 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. ISSUES FOR ADJUDICATION

28. 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 AND OBSERVATIONS OF THE AUTHORITY

F.I Objection regarding execution of BBA 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(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

F.II Objection regarding deemed date of possession.

As per clause 5.1 of the floor buyer agreement dated 20.11.2012, 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 which ever 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. Taking 24 months from the date of execution of the agreement, the deemed date of possession works out to 20.11.2014. At the outset, it is relevant to comment with regard


Rathee

to the clause of the agreement where the possession has been subjected to sanction of building plan. The drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder 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.

Finding w.r.t grace period: The promoter had agreed to handover the possession of the floor within 24 months from the date of execution of floor buyer agreement or or sanction of building plan, whichever is later. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. Since the later milestone for possession i.e. sanction of building plan is vague, ambiguous and arbitrary, the period of 24 months from the date of execution of floor buyer agreement is taken as the date for calculating the deemed date of possession. Said period expired on 20.11.2014. Further period of grace of 180 days expired on 20.04.2015. As a matter of fact, the promoter did not apply to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. 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.

F.III Objections raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 5.1 works out to 20.11.2014, therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not. The obligation to deliver possession within a period of 24 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition occurred subsequent to the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was



in the year 2014 and the NGT order referred by the respondent pertains to year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

F.IV Objection raised by the complainant in respect of difference in area provided in offer of possession dated 01.08.2024 and occupation certificate dated 05.06.2024.

As per the floor buyer agreement dated 20.11.2012, complainant had been allotted a floor measuring an area of 1510 sq. ft. for which an offer of



possession was issued to the complainant on 01.08.2024. It is the submission of the complainant that the occupation certificate dated 05.06.2024 qua the said floor has only been approved for an area of 1181.40 sq. ft. which is lesser than the area agreed between the parties. Therefore, the respondent be directed to charge only for the area approved in occupation certificate i.e 1181.40 sq. ft and not beyond that. In rebuttal, it has been submitted by the learned counsel for respondent that the residential floor is sold on the basis of super area, and consequently, this is the area reflected in the floor buyer agreement and offer of possession. On the other hand, occupation certificate reflects the floor area ratio admeasured as per the Haryana Building Code 2017 which does not cover all area like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also. In the present case, the area of 1181.40 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 sq. ft. and there is no change/ reduction in the same.

In respect of the issue of difference in area as provided in offer of possession dated 01.08.2024 i.e 1510 sq. ft and occupation certificate dated 05.06.2024 i.e 1181.40 sq.ft , Authority observes that respondent is entitled to charge only for the area of the unit which is actually to be provided to allottee at the time of handing over of possession. Any area over and above the approved area


R. K. Rastogi

mentioned in occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code, 2017 which clearly establish that lift, mumty, balcony, parking, services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of project. However, cost of construction of all such structures which 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 unit. Hence, the plea of respondent deserves to be rejected and respondent is directed to recalculate the price of area of unit, i.e. 1181.40 sq. ft.

F.V Objection raised by the complainant in respect of illegal demands raised along with offer of possession dated 01.08.2024.

a) With regard to the amounts/payments raised on account of difference in area of 1510 sq. ft as mentioned in offer of possession and of area of 1181.40 sq. ft as mentioned in occupation certificate, Authority is of the view that respondent has received occupancy certificate for the unit in question which is for area 1181.40 sq. ft. As discussed in aforesaid paragraph no. F.III. the respondent shall charge from the complainant only for the final area 1181.40 sq. ft. Therefore, respondent is directed to recalculate the charges proportionate to area of the floor with respect to the final area of 1181.40 sq. ft.



b) With regard to the cost escalation charges of ₹ 1,60,180/- , it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 20.11.2014. Respondent has issued an offer of possession to the complainant on 01.08.2024 after a gap of nearly 10 years. Additionally, the offer was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, 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.

c). 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 unit has been obtained by the respondent on 05.06.2024. However, no documentary evidence has been filed on record to establish the fact that


Ratuee

facility of club is operational at site. Complainant in its rejoinder has explicitly stated that the proposed club has not been constructed till date. Respondent has not placed any document/photograph to negate the claim of the complainant. 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, respondent will become entitled to recover it in future as and when proper club will become operational at site.

d) With regard to the demand raised by the respondent on account of GST, Authority is of the view that the deemed date of possession in this case works out to 20.11.2014 and charges/taxes applicable on said date are payable by 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 cannot be burdened with 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 complainant.

e) Complainant has raised an objection that respondent is charging maintenance charges without handing over actual possession. In this regard, it is observed that complainant is liable to pay amount of Interest free maintenance security at the time of handing over of possession and thereafter, maintenance charges will become payable after taking over actual physical possession of unit.

29. The facts set out in the preceding paragraph demonstrate that, it is an admitted fact that the handing over of possession of the floor has been delayed beyond the stipulated period of time. As per clause 5.1 of the agreement, respondent should have delivered possession of the booked floor by 20.11.2014. However, the respondent failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on 01.08.2024 after receipt of occupation certificate on 05.06.2024. Along with said offer of possession respondent 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 FV of this order. Now the only issue remaining is with regard to the period for which delay interest is admissible to the complainant for the delay caused in delivery of possession. As elaborated in para FII, the respondent should have delivered possession of the floor to the complainant by 20.11.2014. The benefit


Ratna

of grace period has been denied to the respondent as the same was specifically for pursuing the grant of occupation certificate, whereas the respondent had even failed to complete construction during the said period. Therefore, for the purpose of calculating the delay interest payable to the complainant, the deemed date of possession is taken to be 20.11.2014. Thus, the complainant is entitled to receive delay interest from the deemed date of possession i.e 20.11.2014 till the date of offer of possession i.e 01.08.2024. 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(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*

Ratna

(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".."

30. 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 11.10% (9.10% + 2.00%).
31. Authority has got calculated the interest on total paid amount from due date of possession till the date of offer of possession in respective complaints as mentioned in the tables below:

Complaint no. 1917 of 2023:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 01.08.2024 (in ₹)
1.	23,91,709.55/-	20.11.2014	25,76,972/-
2.	24,606/-	25.11.2016	21,005/-
3.	2,96,801/-	14.08.2017	2,29,712
Total:	27,13,116.55/-		28,27,689/-



Complaint no. 1924 of 2023:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.02.2024 (in ₹)
1.	23,38,392.88/-	03.04.2014	25,55,082/-
2.	24,056/-	24.11.2016	19,218/-
3.	3,13,872.65/-	22.10.2018	1,84,222/-
Total:	26,76,321.53/-		27,58,522/-

32. It is pertinent to mention that in the captioned complaints, complainants have received timely payment discount from the respondent 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 respondent 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 respondent.

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. In Complaint no. 1917 of 2023 respondent is directed to pay upfront delay interest of ₹ 28,27,689/- to the complainant within 90 days as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017. Interest shall be paid uptill the time provided under Section 2 (za) of the RERA Act.
- ii. In Complaint no. 1924 of 2023 respondent is directed to pay delay interest of ₹27,58,522/- to the complainant within 90 days as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017. Interest shall be paid uptill the time provided under Section 2 (za) of the RERA Act.
- iii. The respondent shall issue a fresh statement of account to the complainant(s) in respective complaints incorporating therein the principles laid down in this order within 30 days of uploading of this



order. Complainant shall accept the offer of possession within next 30 days of the fresh offer.

iv. Complainant shall remain liable to pay any due amount as per agreement to sell.

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


.....
CHANDER SHEKHAR
[MEMBER]


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

