



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	754 of 2022
Date of filing.:	29.04.2022
First date of hearing.:	07.07.2022
Date of decision.:	13.05.2025

Pluto Reality
Through its Partner/ Authorised representative
Namely Ashish Gupta
Having its registered office at
First Floor, Bhanot House, 17, Community Centre,
Gulmohar Enclave Extension, Delhi

....COMPLAINANT

VERSUS

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

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: -

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

Mr. Tejeshwar Singh, Learned Counsel for the respondent
through VC.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 26.05.2022 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.	E-17-32-SF (Later changed to E-15-12-SF vide re-allotment letter dated 27.09.2012)
5.	Date of Allotment	24.12.2009



6.	Date of floor buyer agreement	None
7.	Due date of possession	Not available
8.	Basic sale consideration	₹27,24,427.56/-
9.	Amount paid by complainant	₹ 8,19,264/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. In the captioned complaint, 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 ₹ 2,50,000/-. Complainant was allotted floor no. E-17-32-SF, admeasuring 1203 sq. ft. vide allotment letter dated 24.12.2009. Thereafter, the respondent neither executed floor buyer's agreement qua the allotted floor nor completed the development work.
4. After a few years, upon repeated inquiry from the officials of the respondent company, the complainant was told that due to reasons beyond their control, the respondent was not in a position to complete the development works of the allotted floor i.e Floor no. E17-32-SF and thus, another floor in place of the already allotted floor will be allotted to the complainant. Since, the complainant had already made payment of a hefty amount of ₹ 8,10,750/- to

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the respondent, thus, the complainant being helpless, agreed to the offer made by the respondent. That, thereafter, vide allotment letter dated 27.09.2012, the complainant was allotted floor bearing no. E15-12-SF measuring 1404 sq. ft. It is pertinent to mention that the respondent had also got signed from the complainant a consent form with regard to the alternate allotment offered by the respondent company. Copy of the re-allotment letter dated 27.09.2012 and consent form dated 27.09.2012 is annexed as Annexure C-7 and C-8. The newly allotted floor was confirmed by the respondent vide letter dated 22.01.2013, annexed as Annexure C-9.

5. That, thereafter also, despite repeated reminders, respondent failed to get executed a floor buyer agreement qua the floor bearing no. E15-12-SF. The respondent further failed to develop the project. It is pertinent to mention that at the time of booking, the respondent had promised that the possession of the floor will be delivered within 3 years from the date of booking.
6. It is submitted that for the period from the last date of payment i.e 21.10.2009 till February 2017, the respondent did not raise any demand from the complainant qua the floor in question. That thereafter, vide letter dated 29.03.2017, the respondent company raised demand of ₹ 8,512/- towards Value Added Tax, which was duly paid by the complainant on 08.05.2017, receipt of which is annexed as Annexure C-11.
7. Despite a lapse of nearly 8 years from the date of booking/allotment the respondent failed to execute a floor buyer agreement and to complete the



development works, thus causing delay in delivery of possession of the booked floor. Although, the complainant kept on approaching the respondent-company for execution of agreement as also qua delay being caused in development of floor and handing over the same, but received no response from the respondent.

8. The respondent further issued statement of account dated 22.02.2019 and 12.11.2021 in respect of the floor in question, perusal of which would shows that the amount which was demanded by the respondent was duly deposited by the complainant. Statement of Account, dated 22.02.2019 and 12.11.2021 is appended herewith as Annexure C-12 & C-13.
9. That thereafter, the respondent-company on 14.01.2022, issued a demand letter demanding therein, all the remaining amount qua the floor in question i.e. ₹ 27,56,235/- without even apprising the complainant about the stage of development. Copy of letter dated 14.01.2022 is appended herewith as Annexure C-14.
10. That in response to the letter dated 14.01.2022, the complainant sent an email dated 16.01.2022 to the respondent-company, submitting therein that besides the unit in question the complainant had also booked another floor bearing no. Z-22-19 (Second Floor) in the project of the respondent and payment of ₹ 9,18,120/- was also deposited 12 years back in the year 2009 although repeated queries were made by complainant with regard to the development and possession of the said floor (Floor No. Z-22-19) but there


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has been no progress in the development of the said floor. In view of the same, vide the said email dated 16.01.2022 request was made to the respondent-company to adjust the amount deposited qua Floor No. Z-22-19 in the floor in question i.e. E-17-32 SF. It was also requested since the said amount was deposited about 12 years back, thus, interest upon the said amount be calculated on the same rate, which is charged by the respondent-company for the delayed payment and accordingly, fresh statement of the account be issued to the complainant enabling the complainant to clear the same. Copy of email dated 16.01.2022 is appended herewith as Annexure C-15. To substantiate the fact that the complainant has deposited an amount of ₹. 9,18,120/- qua another booked floor i.e. Floor No. Z-22-19 (Second Floor), the statement of account dated 22.02.2019, issued by the respondent-company itself, is appended herewith as Annexure C-16.

11. That since no response to the email dated 16.01.2022 was received by the complainant, thus, another email dated 24.01.2022 was sent by the complainant to the respondent-company. Copy of email dated 24.01.2022 is appended herewith as Annexure C-17.

12. That thereafter, the respondent-company, vide their email dated 25.01.2022, duly confirmed the receipt of the above said emails of complainant and informed that they are looking into the matter and will revert to the same. Copy of email dated 25.01.2022 is appended herewith as Annexure C-18. However, the respondent-company, instead of apprising the complainant

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with the amount, if any, due towards the unit in question, surprisingly and shockingly, vide letter dated 01.02.2022 cancelled the unit of the complainant by submitting therein that despite written reminders issued by the respondent-company the amount outstanding towards the unit in question has not been deposited. Copy of letter dated 01.02.2022 is appended as Annexure C-19.

13. It is submitted that perusal of the letter dated 01.02.2022 itself shows the malafide and illegal acts of the respondent-company, as from perusal thereof, it is apparent that the respondent-company despite having received substantial amount, did not execute the agreement, which was mandatorily to be executed. It is further revealed that it has been mentioned therein that various reminders and then final notice was issued by the respondent-company to the complainant for depositing the due amount. In this regard, it is submitted that neither date of any of the reminders, nor of the final notice has been mentioned, to substantiate the claim of the respondent with regard to the fact that indeed respondent had issue demand/reminder letters to the complainant.
14. It is an admitted fact that the respondent has already received an amount of ₹8,19,264/- from the complainant towards booking of the allotted floor. However, respondent has time and again failed to execute a floor buyer agreement qua the said floor and has further failed to deliver possession after completing the development works at the site. More than 15 years have

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passed since the date of first booking but the respondent is yet to provide update regarding the status of construction of the floor in question. Rather the respondent has illegally cancelled the allotment of the complainant vide letter dated 01.02.2022. Hence, the present complaint, seeking quashing of the said letter dated 01.02.2022 and directions to the respondent to deliver possession of the floor along with payment of delay interest for the delay caused in delivery of possession.

C. RELIEF SOUGHT

15. In view of the facts mentioned above, the complainant prays for the following reliefs):-

- i. The Respondent be directed to withdraw cancellation letter dated 01.02.2022, qua the floor in question, as the same has been issued illegally and without any cogent reason.
- ii. The Respondent be directed to hand over possession of floor in question to the complainant, without any further delay, as, at the time of booking, the possession was promised to be handed over within 3 years of booking i.e. by 27.05.2012 (date of booking being 28.05.2009).
- iii. The respondent be directed to raise demand qua the remaining amount of the unit in question, only after completing the development work and offering possession, and the said amount is liable to be demanded, only



after excluding the delay penalty amount atleast @ 12% per annum, qua the unit in question, beyond 27.05.2012 (agreed date of possession i.e. 3 years from the date of booking) till offer of possession.

- iv. The respondent be directed to make payment of Rs. 5 lacs, to the complainant, on account of mental harassment and torture suffered caused to complainant by respondent. The Respondent be directed to make payment of litigation expenses to the tune of Rs. 55,000/-, to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. Learned counsel for the respondent filed detailed reply on 19.01.2023 pleading therein:

17. That on 25.05.2009, complainant approached the respondent for the booking of a residential floor in the project being developed by the respondent namely "Park Elite Floors" located at Parklands, Faridabad, Haryana and opted for the construction Linked payment plan. Respondent vide allotment letter dated 24.12.2009 allotted floor bearing no. E-17-32 on the second floor having a super built-up area tentatively measuring 1,203 sq. ft. Thereafter, as per the agreed terms the provisional allotment of the complainant was changed from unit no. E-17-32 to E-15-12, which was duly agreed to and accepted by the complainant.



18. Respondent has raised each specific demand strictly in consonance with the payment plan opted and agreed at the stage of booking. However, complainant failed to adhere to the agreed payment plan. Respondent was constrained to issue a reminder at the earliest, however, all went in vain. Despite that it is imperative to note that the floor of the complainant has been completed as on 07.09.2018. The Respondent vide Memo bearing no. DTP/(FBD)OC/2018/5329 has received the occupation certificate from the government authority and the possession of the unit was also offered to the complainant on 04.12.2021. However, the complainant failed to clear the outstanding dues and take possession of the floor despite issuance of reminder notice dated 14.01.2022. Therefore, respondent was left with no choice but to terminate the floor of the complainant vide termination letter dated 01.02.2022.
19. That the project "Park Elite Floor" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, the respondent had to encourage additional incentives like 'Timely Payment Discounts' while on the other hand, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the Respondent such as ban on construction by the Honble Supreme Court of India in the case titled as "M.C. Mehta v. Union of India", ban on



construction by the Principal Bench of NGT in Vardhaman Kaushik v. Union of India and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, 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. Due to these unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed and it took longer than expected to complete the construction of the project.

20. During the course of arguments, learned counsel for respondent stated that in present complaint, occupation certificate for the booked floor in question was obtained on 07.09.2018 and offer of possession was made on 04.12.2021. On 14.01.2022 a reminder to pay the pending amount was issued to the complainant, however, complainant had paid no heed to the same and did not pay the said amount. He further stated that complainant had made last payment on 09.05.2017, thereafter nothing has been paid by



complainant till date. Therefore, respondent was constrained to terminate the unit on account of non - payment of pending dues on 01.02.2022. Hence, cancellation is valid and justified on part of the respondent. Learned counsel for the respondent further submitted that throughout the years all the letters/notices have been issued to the complainant on the same address, as mentioned in the complaint file, including the letter of offer of possession. Complainant cannot selectively claim that the offer of possession was never served upon it, however, the remaining letters/notices were served on the same address. It is a matter of fact that an offer of possession was duly issued to the complainant on 04.12.2021 for payment of outstanding amount and for taking possession however, the complainant failed to honour the demand and take possession.

21. During arguments, Authority posed a question to respondent counsel that after sending email dated 25.01.2022, whether respondent had communicated to complainant about action taken by respondent on complainants request to adjust already paid amount qua unit no Z-22-19 against unit no E-15-12 SF. Learned counsel for respondent stated that no such letter is available to show that any communication after 25.01.2022 and before terminating unit on 01.02.2022 has been sent by respondent.

A handwritten signature in blue ink, appearing to read 'Rathee', with a horizontal line underneath it.

E. REJOINDER FILED BY COMPLAINANT

22. Complainant had filed a rejoinder in the caption complaint on 23.08.2023 pleading therein that the respondent in its reply has submitted that the construction of the project in question was completed and the plot on which the floor of the complainant is situated received occupation certificate on 07.09.2018 and an offer of possession was issued to the complainant on 04.12.2021. However, the complainant submitted that the said offer of possession dated 04.12.2021 was never served upon the complainant and the same was served for the first time along with reminder letter dated 14.01.2022 issued by the respondent for payment of outstanding amount of ₹ 27,56,235.11/-. The difference of 3 years from the date of receipt of occupation certificate on 07.09.2018 and the date of issue of offer of possession 04.12.2021 itself raises doubt with regard to the said offer. It has further been pleaded that the complainant had requested the respondent to adjust the amount paid in lieu of floor bearing no. Z-22-19 SF along with interest towards the floor in question but the respondent failed to pay heed to the request of the complainant.

23. During the course of arguments, learned counsel for the complainant apprised the Authority that with regard to the second floor booked by the complainant bearing no. Z-22-19-SF, the matter has been settled between the complainant and respondent vide settlement deed dated 25.05.2023 and



the amount paid for the said floor was duly returned by respondent with some interest to the complainant. He submitted that the complainant is interested in getting possession of the floor in question and is ready to pay the pending amount. He prayed that direction be issued to the respondent to deliver possession of the floor in question along with delay interest for the delay caused in delivery of possession.

F. ISSUES FOR ADJUDICATION

24. Whether the complainant is 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

25. The facts set out in the preceding paragraph demonstrate that, vide allotment letter dated 24.12.2009, complainant had been allotted a floor bearing no. E17-32 SF in the project in question, promised to be delivered within a period of 3 years. However, at the end of the said period, respondent failed to deliver possession of the said floor, stating that for reasons beyond their control the same could not be constructed. Vide re-allotment letter dated 27.09.2012, the complainant got allotted a different floor bearing no. E15-12-SF in the same project. Complainant, who had already invested an amount of ₹ 8,10,750/- with the respondents in 22.10.2009, agreed to the re-allotment to safeguard its interests and also executed a consent form dated 27.09.2012 in respect of the change in the



allotment of floor from E17-32 Sf to E15-12 SF. It is pertinent to mention that respondent failed to execute a floor buyer agreement with the complainant in respect of either of the allotted units. Thus, there is no floor buyer agreement between the parties to crystallise the terms of agreement. No communication with regard to the stage of construction was ever made to the complainant during this period of time. Thereafter, respondent issued a demand letter dated 10.11.2016 to the complainant for an amount of ₹ 8,521/- on account of VAT which was paid by the complainant vide receipt dated 09.05.2017. It is noteworthy to highlight that for the period from the confirmation letter for floor bearing no. E15-12 SF (i.e. on 22.01.2013) till 09.05.2017 (when the demand for VAT was paid) there has been no communication placed on record on the part of the complainant to show that it had pursued its allotment qua the floor bearing no. E15-12 SF with the respondent company. Complainant has nowhere agitated the delay caused in delivery of possession of the allotted floor. Neither any demands have been raised by the respondent,

26. Then, thereafter, after a gap of nearly five years i.e. on 04.12.2021, respondent issued an offer of possession to the complainant for floor bearing no. E15-12 SF along with a statement of account of payables and receivables, thereby raising a demand of ₹ 30,04,235.56/-. Said offer of possession has been resisted by the complainant stating that it was never served. Rather, the complainant avers that they came to know about the



alleged offer of possession through demand notice dated 14.01.2022. Further the receipt of occupation certificate was never communicated to the complainant. In the face of such a huge demand, the complainant vide email dated 16.01.2022 had asked the respondent to cancel the allotment of another floor booked by the complainant in Tower Z of the same project bearing no. Z-22-19-SF, since there was no development in said tower, and to adjust the amount of ₹ 9,18,120/- that had been deposited by the complainant with the respondent since 20009 along with admissible interest for that particular floor towards payment of the floor in question i.e E-15-12 SF. However, the respondent failed to respond to the said letter compelling the complainant to send a reminder email dated 24.01.2022 and in response thereto, the respondent replied vide email dated 25.01.2022 stating the matter is being looked into. However, the respondent, rather than reverting to the request of the complainant, arbitrarily, cancelled the allotment of the complainant qua the floor bearing no. E-15-12 SF vide termination letter dated 01.02.2022. The learned counsel for the respondent was enquired with regard to action taken by respondent on complainant's request to adjust already paid amount qua floor no. Z-22-19 SF in favour of floor no E-15-12 SF. In response, respondent's counsel submitted that no letter is available on record regarding any communication after 25.01.2022 and before terminating the floor on 01.02.2022.



27. Admittedly, the delivery of possession of the floor in question has been delayed beyond a reasonable period of time. Complainant had booked a floor in the project of the respondent in 2009. However, after a lapse of three years, respondent had negatively used its dominant position to unilaterally change the allotment of the complainant to a different floor and thus initiate a fresh timeline for delivery of possession. Further the respondent failed to execute a floor buyer agreement in respect of the re-allotment in favour of the complainant which would have crystallised the terms of agreement between the parties and provided for a clear timeline for delivery of possession. It is also noteworthy to mention that the respondent has retained an amount of ₹ 8,10,750/- paid by the complainant since 22.10.2009. Said amount was adjusted towards the re-allotted floor. Thus the respondent had been enjoying the amount paid by the complainant since 2009. In the absence of a floor buyer agreement, it cannot be rightly ascertained as to when the possession should have been delivered to the complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. In captioned complaint, complainant had initially been allotted a floor in the project in question vide allotment letter dated



24.12.2009. Therefore, a period of three years from the said date works out to 24.12.2012, meaning thereby that the respondent should have delivered possession of the floor to the complainant by 24.12.2012.

The respondent has averred that the delay in delivery of possession has been due to force majeure conditions. Respondent has cited circumstances beyond its control such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority and Covid-19 etc for the cause of delay. In its reply respondent has cited that National Green Tribunal had put a ban on construction activities in National Capital Region in the year 2016 thus causing delay in construction of the project in question. However, respondent has failed to attach a copy of the order of the National Green Tribunal banning the construction activities. It is noteworthy that in the captioned complaint possession of the floor should have been delivered by 24.12.2012 which is much prior to the proposed ban. Therefore the respondent cannot be allowed to take advantage of the delay on its part by claiming the delay caused due to statutory approvals/directions.

As per preceding paragraph, possession of the unit should have been delivered to the complainant by 24.12.2012, whereas COVID-19 outbreak hit construction activities post 22nd March 2020 i.e seven 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”

28. Factual matrix of the captioned complaint reveals that an offer of possession was issued to the complainant on 14.12.2021. It is an admitted fact that the plot on which the said floor is constructed received occupation certificate on



07.09.2018. There is a three year gap/delay in receipt of occupation certificate and issuing of offer of possession. Respondent in its written submissions/ oral pleadings has failed to justify this three year delay in issuing offer of possession to the complainant after receiving the same in the year 2018. It is a common market practice that after getting occupation certificate for a project promoters are very pro-active in offering possession so that they can demand all payments due and can relieve themselves of all obligations. However, this was not so with the present case. It is noteworthy to mention that during this period the respondent had issued two statements of account to the complainant dated 22.02.2019 and 12.11.2021 but remained silent on offer of possession even after receipt of occupation certificate, raising a genuine doubt with regard to the conduct of the respondent. Further, it has been alleged by the complainant that the said offer of possession dated 04.12.2021 was never served upon it. In this regard it is observed that the complainant in its complaint had failed to bring to the notice of the Authority the fact that an offer of possession has been issued by the respondent in respect of the floor in question. It was only after the filing of the reply that the complainant admitted through its rejoinder that though an offer of possession had been issued but the same was never served upon the complainant until the reminder notice dated 14.01.2022. Upon perusal of record, it is observed that the address of correspondence of the complainant has remained the same and letters/notices have been served



upon it throughout the years. The fact that only the letter of offer of possession was not served but the subsequent reminder letter did get served on the same address raises a genuine doubt against the submissions of the complainant, which is aided by the fact that the complainant had originally concealed from the Authority that an offer of possession has been issued in the present complaint. In the reply, respondent has placed on record a copy of offer of possession however, the no postal receipt has been attached with the same to substantiate the fact that the offer of possession was served upon the complainant. Throughout proceedings the respondent has failed to prove that the offer of possession had indeed been served upon the complainant. Both parties have failed to place on record proper documentary evidence in support of their claims. Since there is no proof otherwise, it is accepted that the complainant became aware with regard to the offer of possession on 14.01.2022.

29. From the year 2016, when the demand on account of VAT was raised by the respondent, until 14.01.2022 there had been no effective communication between the parties. It was after the demand letter dated 14.01.2022 that the complainant became aware of the fact that an offer of possession in respect of the floor in question has been issued and there is an outstanding balance amount of ₹ 30,04,235.56/- to be paid to the respondent. Said demand was to be paid within a period of 30 days. Vide email dated 16.01.2022 complainant had requested the respondent to adjust the amount that had been


deposited towards another floor booked by the complainant in Tower Z along with admissible interest and convey the remaining amount after adjustment to complainant as it would relieve some of the financial burden. Vide email dated 25.01.2022 respondent had agreed to pursue the matter however, instead of adjusting the admissible amount the respondent had rather surreptitiously cancelled the allotment of the complainant qua the floor in question vide termination letter dated 01.02.2022, all the while retaining the amount of ₹ 8,19,264/- paid by the complainant towards the booked floor in question i.e E15-12 SF and also the amount of ₹ 9,18,120/- paid towards floor bearing no. Z-22-19 SF.

30. A bare perusal of the statement of account attached along with the alleged offer of possession dated 04.12.2021 reveals that the respondent had raised a demand of ₹ 30,04,235.56/- as total outstanding amount payable by complainant towards the booked floor to be paid within 30 days. However, in said demand respondent had failed to factor in the quantum of delay interest payable to the complainant as per Section 18 of the Act for the inordinate delay caused in delivery of possession. It has been mentioned that the complainant did not have adequate funds and had requested the respondent to adjust the already deposited amount for a different floor along with interest towards payment of floor in question i.e E15-12 SF as it would have relieved some of the financial burden. Vide email dated 25.01.2022 respondent had agreed to look into the matter regarding

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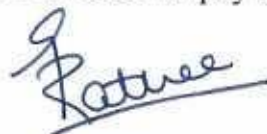
adjustment of amount paid towards floor no. Z 22-19 SF, however, no document has been placed on record to show that the respondent had addressed the issue of adjustment of the amount. It is pertinent to mention that after the filing of the present complaint, the respondent had later on entered into a settlement agreement dated 25.05.2023 with the complainant qua the floor bearing no. Z22-19 Sf and had refunded an amount of ₹ 18,30,236/- to the complainant.

31. In light of the aforementioned observations, it is observed that possession of the booked floor should have been delivered to the complainant by 24.12.2012. However, respondent failed to complete construction of the project and timely deliver possession of the booked floor. Though the floor had received occupation certificate on 07.09.2018 after completion of development works but the respondent for reasons best known to it failed to act upon the said occupation certificate. An offer of possession was issued to the complainant on 04.12.2021. Service of notice of offer of possession upon the complainant has been contended by both parties, however, due to lack of proper postal receipt the benefit of doubt is given to the complainant and it is accepted that the said notice was not served upon the complainant. Nevertheless, complainant became aware of the fact that possession of the floor is being offered to it on 14.01.2022. Complainant tried to make payment of outstanding demand of ₹ 30,04,235.56/- by partial adjustment of already paid amount but the said



request was not processed by the respondent. Rather the respondent had terminated the floor on 01.02.2022 since the complainant had failed to accept the offer of possession dated 04.12.2021. The termination of the allotment of the complainant vide letter dated 01.02.2022 is not a valid termination since the respondent had failed to return the amount after deduction of earnest money and is therefore quashed. The purpose of the issuing offer of possession should have ultimately led to physical handing over of possession, however, the respondent also failed to take steps towards the same, all the while retaining the amount paid by the complainant. Whereas the complainant had also failed to actively pursue its interest in the floor in question. Complainant has failed to place on record any documentary evidence showcasing that the complainant had agitated the delay caused in delivery of possession with the respondent throughout the years. Thus, in the interest of principles of natural justice and equity, the rights and liabilities of both parties are being freezed as in the year 2022, i.e as on 14.01.2022 when the offer of possession was deemed served on the complainant.

32. In view of the aforesaid discussion, it is observed that the complainant is entitled to receive delay interest for the delay caused in handing over of possession as per Section 18 of the RERA Act from the deemed date of possession i.e 24.12.2012 till the date of communication of offer of possession i.e 14.01.2022. The respondent is directed to pay delay interest



to the complainant at the prescribed rate i.e SBI MCLR + 2% (9.10 + 2 = 11.10%). The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of IRRERA 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"

33. 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 handing over of possession as mentioned in the tables below:



Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 14.01.2022 (in ₹)
1.	8,10,750.55/-	24.12.2012	8,10,750.55/-
2.	8,512.89/-	09.05.2017	8,512.89/-
Total:	8,19,264/-		10,90,516/-

34. It is pertinent to mention that in the captioned complaints, complainant 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.



35. The complainant is seeking compensation to the tune of ₹. 5,00,000/- on account of mental harassment and torture caused to the complainant and ₹ 55,000/- as litigation expense. 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.

G. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to pay upfront delay interest of ₹ 10,90,516/- till the date of communication of offer of possession after receipt of occupation

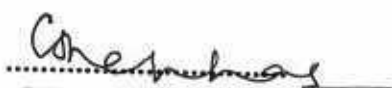


certificate to the complainant within 90 days as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

(ii) Respondent shall issue a fresh statement of account to the complainant after adjusting the component of delay interest admissible to the complainant.

(iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of handing over of possession.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]