



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	135 of 2024
Date of filing.:	29.01.2024
First date of hearing.:	05.03.2024
Date of decision.:	20.05.2025

1. Santosh Muthoo W/o Sh. Vinod Kumar Muthoo
2. Vinod Kumar Muthoo S/o Sh. Niranjan Nath Muthoo
Both R/o A 10, Laxmi Kunj, Sector 13, Plot No. 6
Rohini, New Delhi 110085

....COMPLAINANTS

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 Countrywide Promoters Private Limited
Through its Managing Director
Having its registered office at: M-11, Middle
Circle Connaught Circus New Delhi 110001

....RESPONDENTS

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

Present: - Mr. Arjun Kundra, Counsel for the complainants through VC
Mr. Tejeshwar Singh, Counsel for the respondent 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, 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
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	E-40-45-FF, Block E, measuring 876 sq. ft.
5.	Date of Allotment	24.12.2009
6.	Date of floor buyer agreement	29.06.2011
7.	Possession clause in floor buyer agreement	Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of sanction of building



		<p>plan,. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the three independent floors are situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).</p>
8.	Due date of possession	29.06.2013
8.	Basic sale consideration	₹15,39,664/-
9.	Amount paid by complainant	₹ 19,20,380.79/-
10.	Offer of possession.	12.01.2024

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B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that complainants 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 ₹ 5,00,000/-. Complainants were allotted floor no. E-40-45-FF admeasuring 876 sq. ft. vide allotment letter dated 24.12.2009.
4. That a floor buyer agreement qua the booked floor was executed between the complainants and the respondents on 29.06.2011. A copy of the floor buyer agreement is annexed as Annexure C-2. As per clause 4.1 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 or completion of payment of 35 % of the basic sale price alongwith 20% of EDC and IDC, whichever is later. The period of 24 months from the date of execution of the floor buyer agreement expired on 29.06.2013. 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 ₹ 15,39,664/- against which the complainants have already paid an amount of ₹ 19,20,380.79/- till date. Copies of payment receipts have been annexed as Annexure C-4.
5. The complainants have made all the payments before time. That while the complainants have 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 29.06.2013.

6. 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. .
7. 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.
8. That on 12.01.2024 respondent no.1 issued an offer of possession to the complainants in respect of the booked floor after a delay of almost 11 years

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from the deemed date of possession i.e 29.06..2013. A copy of the offer of possession is annexed as Annexure C-5. Even though the construction and development of the residential floor and the project was incomplete, however, the respondent no. 1 had illegally issued an offer of possession to the complainant. Said offer of possession was without an occupation certificate. Further, the respondents had raised several illegal and arbitrary demands in respect of cost escalation, club charges, and unilateral increase in area of the floor from 876 sq. ft to 1047 sq. ft. GST charges. Also the the component of delay interest admissible to the complainants had not been adjusted in the said statement of accounts. Hence, the complainant could not have accepted said offer of possession.

9. Therefore, the complainants have filed the present complaint seeking possession of the floor bearing no. E-40-45-FF along with interest for the delay caused in delivery of possession in terms of RERA Act and Rules therein.

C. RELIEF SOUGHT

10. 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. E-40-45-FF, BPTP Park Elite Floors, Parklands, See 75 to 89, Faridabad, Haryana, admeasuring 876 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., 29.06.2013 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 29.06.2011 and/or is illegal and arbitrary including but not limited to cost escalation charges of ₹53,725.08/- and unilateral illegal increase in total sale price to ₹ 24,40,369/- and unilateral increase in basic sale price from ₹ 15,39,664/- to ₹ 19,54,337.94/- and unilateral increase in area from 876 sq. ft to 1047 sq. ft., 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;
- iv. To quash/set aside the alleged illegal offer of possession dated 12.01.2024 and subsequent letters/demands and other unfair one sided documents agreements executed by the respondents illegally and to



issue a fresh offer of possession after due completion and receipts of all certificates.

- v. To issue a fresh statement of accounts as per the law.
- vi. To further quash/set aside the alleged requirement/demand of undertakings/indemnity illegally sought from the complainants by the respondent at the time of taking possession.

11. 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 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



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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 30.04.2024, 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.

12. Learned counsel for complainants 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. 29.06.2013 till the actual physical delivery of possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Learned counsel for the respondent filed detailed reply on 06.03.2024 pleading therein:



14. That the complainants expressed 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 complainants and the complainants was given an inaugural discount of ₹ 68,340/- by the respondent no. 1. A copy of the booking form dated 21.05.2009 is annexed and marked as Annexure R1.
15. That consequently, a residential independent floor bearing no. E-40-45-FF, admeasuring 1047 sq. ft super area was allotted vide allotment letter dated 24.12.2009. Copy of allotment letter dated 24.12.2009 is annexed as Annexure R2.
16. That thereafter, a floor buyer's agreement was executed between the complainants and the respondents on 29.06.2011. A copy of the floor buyer's agreement is annexed and marked as Annexure R3. Further, as per clause 4.1 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 payment of 35% of EDC and IDC charges 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**. Thus the proposed due date of possession works out to 11.01.2014.



17. 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, a 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.
18. 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.
19. It is also submitted that with regard to the dimensions of the floor, respondent no. 1 had duly communicated that the area of the floor has been increased from 876 sq. ft to 1047 sq. ft vide letter dated 24.06.2011 to the



complainants and the demands for the outstanding dues on the basis of the increased area were also raised.

20. That despite facing innumerable hardships, respondent no. 1 completed construction of the project and thereafter, offered possession of the booked floor to the complainant on 12.01.2024. Along with said offer, complainants were asked to make the requisite payment of outstanding balance vide statement of account and complete documentation of final dues to initiate the process of physical possession of the floor, however, the complainants never turned up to take possession of the floor.

21. During the course of arguments, learned counsel for respondent submitted that floor buyer agreement was executed between parties on 29.06.2011 for floor bearing no. E40-45- FF, situated in Park Elite Floors, Parklands, Faridabad. As per clause 4.1 of agreement, due date of possession was 24 months from date of execution of agreement or completion of payment of 35% of BSP along with 20% of EDC & IDC (whichever is later) and 180 days grace period. Taking into account the grace period, the deemed date of possession comes to 11.01.2014. Though there has been a delay in handing over of possession, however, respondent no. 1 is ready to pay the delay charges to complainants subject to consideration of two contentions that respondent no. 1 is liable to pay delay charges from deemed date of possession i.e. 11.01.2014 till offer of possession or till occupation for the floor was obtained by respondent no. 1, whichever is later. In present case,



offer of possession was made on 12.01.2024 and occupation was obtained on 30.04.2024. Further, he also submitted that grace period provided in floor buyer agreement for obtaining occupation certificate be considered while calculating deemed date of possession and prayed for relaxation in calculating deemed date of possession on account of force majeure event including relaxation of period due to outbreak of Covid-19.

22. Learned counsel for the respondent submitted that all the charges raised in the statement of account issued with the offer of possession are in consonance with the floor buyer agreement. He referred to clause 20.08 of the agreement for cost escalation charges; clause 1.2, 1.4, and 1.15(i) for increase in area and increase in sale price; GST and Vat charges- as per clause 1.14 and 1.5(g); Club Charges- as per clause 1.5(c) of agreement and maintenance and holding charges which are payable as per clause 8 and clause 4.4 of agreement.
23. 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 876 sq. ft. was mentioned in the floor buyer agreement and offer of possession, but an area of only 794.75 sq. ft. is mentioned in the occupation certificate. Learned counsel for the respondent apprised that the total saleable area of the residential floor is 1047 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. 794.75 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 1047 sq. ft. sq. ft., whereas the FAR area of the residential floor is 794.75 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. Learned counsel for the complainant drew attention of the Authority to detailed explanation of the difference in area of floor allotted in agreement/mentioned in offer of possession and as mentioned in occupation certificate submitted vide application dated 31.03.2025. He stated that the total super area of the floor in question is sum total of the Floor Area Ratio (794.75 sq. ft), Balcony (128 sq. ft.), Mumty with projection; shaft; boundary wall; common area terrace; canopy; and elevation (124 sq. ft) which ultimately comes out to 1047 sq. ft. Respondent has provided a detailed justification of the area of the floor which is being given to the complainants. As per the same, complainants will be enjoying possession of an area of 1047 sq. ft only and said increase is as per the buyer's agreement. Learned counsel for the respondent has placed reliance on judgment passed by Hon'ble Apex



Court in case titled as 'Experion Developers Private Limited Vs Himanshu Dewan and Sonali Dewan' wherein it is observed that sale area is chargeable where promoter developer has been able to justify and substantiate the claim of increase in sale area.

24. The entire claim of the complainants is misguided. Fact of the matter is that respondent has issued an offer of possession to the complainants on 12.01.2024 as per the area agreed between the parties and after obtaining valid occupation certificate. It is the complainants who have failed to come forward and accept said offer of possession.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

26. As per facts and circumstances complainants had booked a residential floor in the project of the respondent namely "Park Elite Floors, Parklands" situated at Sector 75-89, Faridabad. Vide allotment letter dated 24.12.2009 complainants were allotted floor no. E-40-45-FF admeasuring 876 sq. ft. A floor buyer agreement was executed between the complainants and the respondents on 29.06.2011. As per clause 4.1 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 24 months



from the date of execution of the floor buyer's agreement or completion of payment of 35 % of the basic sale price alongwith 20% of EDC and IDC, whichever is later. The period of 24 months from the date of execution of the floor buyer agreement expired on 29.06.2013. Further, the respondent was allowed a period of 180 days for filing and pursuing grant of occupation certificate. Complainants have already paid an amount of ₹ 19,20,380.79/- against basic sale consideration of ₹ 15,39,664/-. An offer of possession in respect of the booked floor was issued to the complainants on 24.01.2024. Allegedly, said offer of possession was without an occupation certificate. Complainant is aggrieved by the fact that the respondents had raised several illegal and arbitrary demands in respect of cost escalation, club charges, and unilateral increase in area of the floor from 876 sq. ft to 1047 sq. ft. GST charges. Also the component of delay interest admissible to the complainants had not been adjusted in the said statement of accounts.

27. Admittedly delivery of possession has been delayed beyond the stipulated period of time. Complainants had booked the floor in question in the year 2009. As per floor buyer agreement possession of the floor should have been delivered within a period of (24) months from the date of execution of floor buyer agreement or payment of 35 % of total sale consideration and EDC/IDC charges, whichever is later. Taking 24 months from the date of execution of the agreement, the deemed date of possession works out to

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29.06.2013. With regard to the clause of the agreement where the possession has been subjected to payment of 35% of sale amount and EDC/IDC charges it is observed that drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of possession of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. It is a matter of fact that the promoter did not apply to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e 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. Thus the deemed date of possession works out to 29.06.2013.

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 29.06.2013 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. Furthermore, 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. As per observations recorded in the preceding paragraph possession of the floor should have been delivered to the complainants by 29.06.2013. However, respondent failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainants on 12.01.2024. Said offer of possession was not acceptable to the complainants as it was issued allegedly without occupation certificate. Also, along with said offer of possession respondent had raised a further demand of ₹ 6,73,988.49/- . These demands have been resisted by the complainants 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 ₹ 53,725.08/- , it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 29.06.2013. Respondents have issued an offer of possession to the complainants on 12.01.2024 after a gap of nearly 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 ₹ 50,000/-, 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 30.04.2024. However, no documentary evidence has been filed on record to establish the



fact that facility of club is operational at site. Complainants have submitted that the proposed club has not been constructed till date. Respondents have not placed any document/photograph to negate the claim of the complainants. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondents will become entitled to recover it in future as and when a proper club will become operational at site.

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 29.06.2013 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 complainants are not liable to pay GST charges. Charges raised on account of VAT and service tax are payable to the Government. A bare perusal of clause 1.5 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.

d) 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 offering possession and thereafter, maintenance charges will become payable after taking over possession of floor.

29. Now the only remaining contention between the parties is with regard to difference in area of the booked floor as provided in the buyer's agreement dated 29.06.2011, as showcased in the offer of possession dated 12.01.2024 and the final area mentioned in the occupation certificate dated 30.04.2024. As per the floor buyer agreement dated 29.06.2011, complainants had been allotted a floor measuring an area of 876 sq. ft., however, said area had been unilaterally increased to 1047 sq. ft by the respondents vide offer of possession dated 12.01.2024. It is submitted by the respondents that the complainants were made aware with regard to the said increase was in consonance of clause 1.2, 1.4, and 1.15(i) of the floor buyer agreement and the complainants were made aware of the same vide letter dated 24.06.2011. Learned counsel for the respondent has placed reliance on judgment passed by **Hon'ble Apex Court** in case titled as



‘Experion Developers Private Limited Vs Himanshu Dewan and Sonali Dewan’ wherein it is observed that sale area is chargeable where promoter developer has been able to justify and substantiate the claim of increase in sale area.

30. In this regard it is observed that the respondent had issued the floor buyer agreement on 29.06.2011 to the complainants merely after a gap of 5 days from issuing the letter dated 24.06.2011 vide which the area of the floor had in been increased from 876 sq. ft to 1047 sq. ft. It is pertinent to note that in the floor buyer agreement the area of floor has been mentioned as 876 sq. ft and not 1047 sq. ft. In case the area had already been increased then the respondent should have executed the floor buyer agreement qua the fresh area. This raises doubt against the submission of the respondents. Also the respondents have not placed on record a copy of the letter dated 24.06.2011 to corroborate their claim. Further, as per clause 1.15 the respondents were allowed an increase in area of 15 % wherese the increase in area from 876 sq. ft to 1047 sq. ft works out to nearly 20%. The increase in the area from 876 sq. ft to 1047 sq. ft does not seem to be in consonance with the terms of buyer’s agreement

31. The final area of the floor in question has been mentioned as 794.75 sq. ft in the occupation certificate dated 30.04.2024 It is the submission of the complainants that the occupation certificate dated 30.04.2024 qua the said floor has only been approved for an area of 794.75 sq.ft which is lesser than



the area agreed between the parties i.e 876 sq. ft. Therefore, the respondents be directed to charge only for the area approved in occupation certificate i.e 794.75 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 794.75 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 1047 sq. ft. and there is no change/ reduction in the same.

32. Now with respect to the question of the final area of the floor which is chargeable from the complainants, it is noted that as per the floor buyer agreement executed between the parties, the area of the floor was 876 sq. ft. however, ultimately as per the occupation certificate dated 30.04.2024, the area of the floor comes to 794.75 sq. ft. 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 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 respondent deserves to be rejected and respondent is directed to re-calculate the price of the floor according to the final area of the floor i.e 794.75 sq.ft.

33. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked floor has been delayed beyond the stipulated period of time. As per clause 4.1 of the agreement, respondents should have delivered possession of the floor by 29.06.2013. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainants on 12.01.2024. 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 28 of this order. Further said offer of possession was without an occupation certificate. Complainants could not have accepted said offer of possession. Thereafter, the respondents received occupation certificate on 30.04.2024, however, the same was not conveyed to



the complainants. From the receipt of occupation certificate respondents have not issued a fresh offer of possession to the complainants conveying the same. Admittedly there has been an inordinate delay in delivery of possession but the complainants wish 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 complainants are also entitled to receive interest from the respondents on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainants. So, the Authority hereby concludes that complainants are entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 29.06.2013 till a valid offer of possession is issued to the complainants. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

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

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof



and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”

34. 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%) from from the due date of possession till the date of a valid offer of possession.
35. 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 in respective complaints 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 date of order i.e 20.05.2025 (in ₹)
1.	18,531,73.79/-	29.06.2013	24,48,139/-
2.	19,607/-	21.11.2016	18,502/-
3.	47,600/-	09.10.2023	8,541/-
Total:	19,20,380.79/-		24,75,182/-
Monthly Interest:	19,20,380.79/-		17,520/-

36. It is submitted that the complainants have paid a total amount of ₹ 19,20,380.79/- to the respondents in lieu of the booked floor. Said amount has been admitted by the respondents vide statement of account dated 09.10.2023. However, complainants have annexed receipt only for an amount of ₹ 18,72,780.79/-. Therefore, for the remaining amount of ₹ 47,600/- the date of payment for the purpose of calculation of interest is being taken as 09.10.2023.

37. 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

38. 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 ₹ 24,75,182/- (till date of order i.e 20.05.2025) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 17,520/- till a valid offer of possession is issued to the complainants



- ii. The respondent shall issue a valid offer of possession along with 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.
 - iii. Complainants will remain liable to pay balance consideration amount, if any, to the respondents at the time of offer of possession
 - iv. The respondents shall not charge anything from the complainants which is not part of the agreement to sell.
39. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]