



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1959 of 2023
Date of filing.:	31.08.2023
First date of hearing.:	22.11.2023
Date of decision.:	20.05.2025

1. Rajeev Magu S/o Sh. S.K Magu
2. Sunita Magu W/o Sh. Rajeev Magu
Both R/o C-27 G.F Ashoka Enclave
Part 2 Sector 37, Faridabad, 121003

....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 BPTP Parklands Pride Limited
[Earlier known as M/s New Age Town Planners Limited]
Through its Managing Director
Having its registered office at: M-11, Middle
Circle Connaught Circus New Delhi 110001

....RESPONDENTS

Latuse

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

Present: - Mr. Arjun Kundra, Counsel for the complainants
 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	Not Registered

Geeta Rathee

	registered	
4.	Details of the unit.	PE-350 FF measuring 1371 sq.ft.
5.	Date of Allotment	06.10.2011
6.	Date of floor buyer agreement	17.03.2012
7.	Due date of possession	17.03.2014
8.	Possession clause in floor buyer agreement	<p>Clause 5.1 <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 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). The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of</i></p>



		<i>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 building consisting the three independent floors including the floor. 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>
8.	Basic sale consideration	₹26,44,399/-
9.	Amount paid by complainant	₹ 25,62,915.02/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

- Facts of the complaint are that complainants in the year 2011 had booked a residential floor in the real estate project namely "Park Elite Floors, Parklands" situated at Sector 75-89, Faridabad. Complainants were allotted floor no. PE-350-FF admeasuring 1371 sq. ft. vide allotment letter dated 06.10.2011.
- That a floor buyer agreement qua the booked floor was executed between the complainants and the respondents on 17.03.2012. A copy of the floor

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buyer agreement is annexed as Annexure C-2. As per clause 5.1 of the agreement, possession of the floor was to be delivered within a period of 24 months from the date of execution of the floor buyer's agreement. The period of 24 months from the date of execution of the floor buyer agreement expired on 17.03.2014. 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 ₹ 26,44,399/- against which the complainants have already paid an amount of ₹ 25,62,915.02/- till date. Copies of payment receipts issued by the respondents and statement of account dated 30.07.2018 have been annexed as Annexure C-3.

5. The complainants have made all the payments before time. 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 17.03.2014.
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 since the booking of the floor in the year 2011 till the filing of present complaint there is no sign of an offer of possession from the respondents. Rather, respondents vide letter dated 17.08.2023 gave the complainants an illegal proposal for alternate options of floor instead of the booked floor and further forcing the complainants 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 complainants. A copy of said letter is annexed as Annexure C-4. The respondents are forcing the complainants to accept arbitrary and unilateral terms.



9. Therefore, the complainants have filed the present complaint seeking possession of the floor bearing no. PE-350-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. PE-350-FF, BPTP Park Elite Floors, Parklands, Sec 75 to 89, Faridabad, Haryana, admeasuring 1371 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., 17.03.2014 till the actual physical and legal delivery of possession and further, execute conveyance/sale deed; and
- iii. Pass an order restraining the respondents from charging any amount from the complainant which do not form part of the floor buyer's agreement dated 17.03.2012 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges and unilateral

Rathee

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;

- iv. Further, to set aside & quash the communication/letter dated 17.08.2023 (Annexure C-4) issued by the respondents to the complainants;
- v. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;

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. The 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, respondents failed to complete the floor, in all respects and thereafter, offer possession within the time period stipulated in the agreement. He submitted that after a lapse



of more than nine years from deemed date of delivery of possession, respondents had offered possession of the booked floor to the complainants on 05.12.2023. Nonetheless, said offer was not legal as it was accompanied with illegal demands. To prove his contention, counsel referred to page no. 121 of reply i.e. statement of accounts issued with the offer of possession dated 05.12.2023. Learned counsel for complainants submitted that as per said statement of account, respondents are charging cost escalation charges, Service Tax, Value Added Tax and GST along with club membership charges. However, club charges cannot be charged by respondents since till date there is no club at site. Further, cost escalation charges cannot be charged since respondents were bound to deliver possession by year 2014 itself, hence any cost escalation due to delay in handing over possession cannot be imposed upon complainants. Lastly, with regard to taxes stated above, the complainant's counsel raised two points. Firstly, all the three charges cannot be charged together. Secondly, effect of GST has come into July 2017 and as per terms of floor buyer agreement deemed date of possession comes to year 2014, meaning thereby if respondent had delivered the possession on time, GST could never be levied upon complainants. Therefore, all the above charges raised by respondents are illegal and arbitrary.

12. Learned counsel for complainants further stated that till date respondents have neither handed over 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. 17.03.2014 till the actual physical delivery of possession.

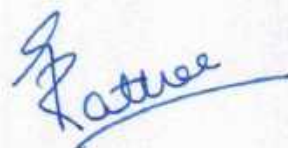
13. Furthermore, with regard to difference in area learned counsel for complainants stated that as per the floor buyer agreement dated 17.03.2012 the super built up area of the present floor was 1371 sq. ft., or 127.369 sq mtrs. on plot measuring 250 sq. yds, whereas the disputed offer of possession dated 05.12.2023 mentions the super built up area of the present floor to be 1371 sq. ft., or 127.37 sq mtrs. However, as per Occupation Certificate dated 09.11.2023, the area of the unit is only 95.988 sq. mtr on plot measuring 191.50 sq. mtrs. This clearly proves the offer of possession & statement of receivables & payables are illegal & against the settled principles of the RERA Act, 2016. Therefore, respondents be directed to issue fresh offer of possession to the complainants.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

14. Learned counsel for the respondent filed detailed reply on 01.03.2024 pleading therein:



15. That the complainants expressed interest to purchase a floor in the project being developed by the respondent no. 1 under the name and style of "Park Elite Floor", Parklands, Faridabad. The respondent no. 2 is a mere confirming party to the agreement. The respondent no. 2 is neither a necessary party nor a proper party to the present case and hence, its name should be deleted from the array of parties.
16. An application/ booking form was executed by the complainant and the complainant was given an inaugural discount of ₹ 1,23,035/- and a timely payment discount of ₹ 97,846.25/- has been given to the complainant by the respondent no. 1. A copy of the booking form is annexed as Annexure R1.
17. That consequently, a residential independent floor bearing no. PE-350-FF, admeasuring 1371 sq. ft super area was allotted vide allotment letter dated 06.10.2011. Copy of allotment letter dated 06.10.2011 is annexed as Annexure R2.
18. That thereafter, a floor buyer's agreement was executed between the complainant and the respondent on 17.03.2012. A copy of the Floor Buyer's Agreement is annexed and marked as Annexure R3. 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 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 17.09.2014.

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, 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.

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 despite facing innumerable hardships, the respondent no. 1 completed the construction of the project and applied for the occupation certificate which was received on 09.11.2023. That thereafter, the respondent no. 1 offered possession to the complainants vide offer of possession dated 05.12.2023. Vide said letter, the complainants were asked to make payment of remaining amount 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. Respondent no. 1 issued reminder letter dated 08.01.2024 requesting the complainants to make the payment but again the complainants failed to respond.

22. During the course of arguments, learned counsel for respondent submitted that floor buyer agreement was executed between parties on 17.03.2012 for floor bearing no. PE-350- FF, situated in Park Elite Floors, Parklands, Faridabad. As per clause 5.1 of agreement, due date of possession was 24 months from date of execution of agreement along with 180 days grace period. Taking into account the grace period, the deemed date of possession comes to 17.09.2014. Admittedly there has been a delay in handing over of possession, and respondent is ready to pay the delay charges to complainants subject to consideration of two contentions.

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Firstly, respondent is liable to pay delay charges from deemed date of possession i.e. 17.09.2014 till offer of possession or till occupation for the unit was obtained by respondent whichever is later. In present case, offer of possession was made on 05.12.2023 and occupation was obtained on 09.11.2023. To support his contention learned counsel for the respondents placed reliance on judgments passed by Hon'ble Supreme Court in 'Wg. Cdr. Arifur Rehman Khan and Aleya Sultana and Ors Vs DLF Southern Homes Pvt Ltd and Ors.'; by Hon'ble Appellate Tribunal in 'Pioneer Urban Land and Infrastructure Limited Vs Mohinder Kumar Jain, Appeal No. 25 of 2021' and Hon'ble Authority in 'Ashok Kumar Sethi and ors Vs BPTP Ltd'. Secondly, he stated that as per Section 19(6) and 19(7) read with 2(z) of the RERA Act, the complainants are also bound to pay delay charges till date of offer of possession and to pay all demands raised in consonance to statement of account within 30 days. Therefore complainants may also be held liable to pay delay interest for not taking possession within 2 months of offering the same. Learned counsel for the respondent placed reliance upon judgements passed by Hon'ble Authority in Complaint no. 79 of 2021 titled 'Asha Bhatt Vs BPTP Pvt Ltd. ' and Complaint no. 149 of 2021 titled 'Neeraj Kumar Vs BPTP Ltd.'

23. With regard to the complainant's argument that the amounts mentioned in the statement of account are illegal and arbitrary, learned counsel for the respondents stated that all said charges were already part of floor buyer



agreement. Clause 20.13 of agreement justify the cost escalation; GST and Vat charges- as per clause 2.6(k) and 9.1; Club Charges- as per clause 2.6(e) of agreement. Maintenance and holding charges are payable as per clause 9 and clause 5.5 of agreement.

24. Learned counsel for the respondent further submitted that the complainant has objected to the area of the floor in question. He apprised that the total saleable area of the residential floor is 1371 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. 1033.2 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 1371 sq. ft., whereas the FAR area of the residential floor is 1033.2sq. 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

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application dated 04.11.2024. He stated that the total super area of the floor in question is sum total of the Floor Area Ratio, Balcony , Mumty with projection; shaft;boundary wall; common area terrace; canopy; and elevation which ultimately comes out to 1371 sq. ft. 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.

25.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 05.12.2023 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

26. 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

27. Given the factual matrix, 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 06.10.2011



complainants were allotted floor no. PE-350-FF admeasuring 1371 sq. ft. A floor buyer agreement was executed between the complainants and the respondents on 17.03.2012. As per clause 5.1 of the agreement, possession of the floor was to be delivered within a period of 24 months from the date of execution of the said agreement 24 months from the date of execution of the floor buyer's agreement. The period of 24 months from the date of execution of the floor buyer agreement expired on 17.03.2014. 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 ₹ 25,62,915.02/ against basic sale consideration of ₹ 26,44,399/-.An offer of possession in respect of the booked floor was issued to the complainants on 05.12.2023 after receipt of occupation certificate on 09.11.2023. Complainant has raised objections to demands on account of cost escalation charges, Service Tax, Value Added Tax and GST along with club membership charges stating that they are being demanded illegally.

28.As per the terms of floor buyer agreement dated 17.03.2012, possession of the floor should have been delivered within a period of 24 months from the date of execution. The buyer's agreement also 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. However, in the present case delivery of



possession of the booked floor has been delayed beyond the stipulated period of time. 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. Thus, period of 180 days cannot be allowed as a further grace period since the respondent was nowhere in a position to offer possession of the booked floor. Considering the circumstances, the deemed date of possession for the booked floor works out to 17.03.2014.

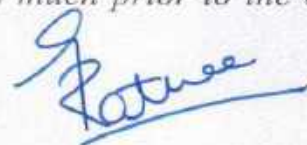
The respondent has averred that the delay in delivery of possession has been due to force majeure conditions. Respondent has cited circumstances beyond its control such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by 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 17.03.2014 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'

29. As per observations recorded in the preceding paragraph possession of the floor should have been delivered to the complainants by 17.03.2014. 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 05.12.2023 after receipt of occupation certificate dated 09.11.2023. Vide said offer of possession, respondent had raised a further demand of ₹ 6,96,591.72/-. 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 ₹ 1,45,435/- , it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 17.03.2014. Respondents have issued an offer of possession to the complainants on 05.12.2023 after a gap of nearly 9 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 9-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 membership 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. 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 17.03.2014 and charges/taxes applicable on said date are payable by the complainants. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in delivery of possession has already been attributed on the part of the respondent's. In case the respondents had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the 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 1.32 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.

30. 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 17.03.2014 and the final area mentioned in the occupation certificate dated 09.11.2023. As per the floor buyer agreement dated 17.03.2014, complainants had been allotted a floor measuring an area of 1371 sq. ft. the final area of the floor in question has been mentioned as 1033.2 sq. ft. in the occupation certificate dated 09.11.2023. It is the submission of the complainants that the occupation certificate qua the said floor has only been approved for an area of 1033.2 sq. ft. which is lesser than the area agreed between the parties i.e 1371 sq. ft. Therefore, the respondents be



directed to charge only for the area approved in occupation certificate i.e 1033.2 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 1033.20 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 1371 sq. ft. and there is no change/ reduction in the same. Now with respect to the question of the final area of the floor which is chargeable from the complainants, 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 1033.2 sq.ft.

31. 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 5.1 of the agreement, respondents should have delivered possession of the floor by 17.03.2014. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on 05.12.2023 after receipt of occupation certificate on 09.11.2023. 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 29 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 observed, the respondent should have delivered possession of the floor to the complainant by 17.03.2014. The benefit 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 17.03.2014. Hence, the complainant is entitled to receive delay interest from the deemed date of possession i.e 17.03.2014 till the date of offer of possession i.e 05.12.2023 issued after receipt of occupation certificate dated 09.11.2023. 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"

32. 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.
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 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.	18,94,557.10/-	17.03.2014	20,45,919/-
2.	3,23,977.37/-	28.05.2014	3,44,541/-

For use

3.	19,793/-	22.11.2016	15,469/-
4.	3,000,92.62/-	30.07.2018	1,78,415/-
5.	24,494.93/-	30.07.2018	14,563/-
Total:	25,62,915.02/-		25,98,907/-

34. 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

35. 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 ₹ 25,98,907/- to the complainant within 90 days as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.
- ii. 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.
- iii. Complainant shall remain liable to pay any due amount as specifically provided in agreement to sell.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]