

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no.	:	4404 of 2023
Complaint filed on:		10.10.2023
Order reserved on:		13.12.2024
Date of Decision:		21.02.2025

Rahul SalujaR/o: Ward no. 4, Near old bus stand, Barwala,
Distt. Hissar, Haryana**Complainant****Versus****1. M/s BPTP Ltd.****2. M/S Countrywide Promoters Pvt. Ltd.**

M-11, middle circle Connaught circus, new delhi, 110001

Respondents**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Kuldeep Kumar Kohli (Advocate)

Harshit Batra (Advocate)

**Complainant
Respondents****ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se.

A. Unit and Project-related details:

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

S. No.	Particulars	Details
1.	Name of the project	Park Generation, Sector-37-D
2.	Unit no.	T3-1704, 3BHK, 17 th floor, tower-D [as per FBA at pg.74 of complaint]
3.	Unit area admeasuring	1470 sq. ft. super area (136.566 sq. mtr.) [as per FBA at pg.74 of complaint] 1521 sq. ft. (141.30 sq. mtr.) super area [as per OP at pg.161 of reply]
4.	Date of allotment in favour of Devinder Kumar	19.12.2012 [pg.86 of reply]
5.	Transferor/Assignor/No minator - Indimnity Cum Undertaking Ad Declaration by Devinder Kumar in favour of complainant	12.03.2013 [Pg.93 of reply]
6.	Date of flat buyer's agreement respondent complainant b/w and	18.10.2013 [as per FBA at pg.71 of complaint]
7.	Possession clause	3.POSSESSION " <u>...the seller/Confirming Party proposes to handover the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of execution</u> "

		<u>of Flat Buyer's Agreement</u> <u>("Commitment Period")</u> . The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for finishing work and filling and pursuing the Occupancy Certificate, etc. from the DTCP under the Act in respect of the project "Park Generations" [as per FBA at page 78 of complaint]	
8.	Due date of possession	18.04.2017 [As per possession clause 36 months from the FBA dated 18.10.2013, plus grace period of 180 days]	
9.	Basic sale consideration	Rs.52,40,550/-	
10.	Total sales consideration of the unit	Rs. 72,32,414/- [As per SOA at pg.102 of complaint]	
11.	Amount paid by the complainant	Rs.72,19,653/- [As per SOA at pg.102 of complaint]	
12.	Occupation certificate /Completion certificate	09.10.2018 [Pg.159 of reply]	
13.	Offer of possession with demand of Rs.10,01,593/-	25.10.2018 [Pg.161 of reply]	
14.	Demand letter/Reminder	14.09.2020, 01.12.2014, 11.10.2013, 24.02.2017 01.02.2014, 02.01.2014, [Pg. 139-158 of reply]	

B. Facts of the complaint:

3. The complainant has made following submissions in the complaint:
- i. That the Complainant being the Second buyer/owner of the unit are allottees within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The Respondents Company, M/S BPTP Ltd. & Countrywide Promoters Pvt. Ltd. Are limited companies incorporated under the Companies Act, 1956 and are inter alia engaged in the business of providing real estate services.
 - ii. That the Respondents Company announced the launch of the project namely "Park Generation" in the year 2011. The unit was first allotted to Mr. Devinder Kumar, Original Allottees, namely of the unit while searching for an apartment/accommodation were lured by the advertisements/Brochures/sales representatives of the Company to buy a house in their project namely "Park Generations" project at Sector 37D, Gurugram Haryana. The agents and officers of the Respondents' Company told Original Allottees about the moonshine reputation of the Company and the agents of the Respondents' Company made huge presentations about the project mentioned above and assured that they have delivered several projects in the National Capital Region prior to this project. The Respondents claimed that they have taken all due approvals, sanctions and Government permissions towards development and construction of "Park Generations". Project and after representing through brochures, about the facilities to be provided. The Original Allottees decided to invest their hard-earned money in purchasing the Unit at "Park Generations" project.
 - iii. That Original Allottee was confirmed the booking of the Apartment bearing unit No. T3-1704/146813 in Park Generations, Sector 37D, Gurugram, Haryana having super area 1470 sq. ft. at "Park Generations" Sector 37D, Gurugram. That Original Allottee vide endorsement dated

- 29.07.2013, endorsed the above-mentioned unit in favour of the Complainant, i.e., Mr. Rahul Saluja, S/O Mr. Bhim Sain Saluja, R/O Ward No. 4, Near old bus stand, Balwala, Distt- Hissar Haryana, 125121, India.
- iv. That the Buyer's Agreement was executed between the Complainant and the Respondents on 18.10.2013 which provides a total Sale Consideration of Rs. 72,27,414.18 for the purchase of the captioned unit including Basic Sale Price, IDC & EDC charges, Car Parking charges, Club Membership charges, Taxes as applicable.
- v. Hereafter the complainant had made the payment of huge amount of Rs.6,23,012.40 vide Receipt No. 2013/1400020163 dated 24.10.2013 as the second instalment, as a result of which complainant also received timely payment discount of Rs. 27,012 from the Respondents. Furthermore, the complainant had made another transaction of Rs. 4,05,136.31 vide Receipt No. 2013/1400025234 dated 17.01.2014, for Basic sale price and also received timely payment discount of Rs. 20,259.31 from the Respondents. Thereafter the complaint has made a payment of Rs. 5,40,247.40 vide Receipt No. 2013/1400026908 dated 17.02.14 to the Respondents as basic sale price consideration and received timely payment discount of Rs. 27,012.40. Furthermore on 15.12.2014 the complainant has made payment for basic sale price consideration amounting to Rs. 5,25,307.40 vide Receipt No. 2014/1400008047, to the Respondents and received a timely payment discount of Rs. 27,012.40/-.
- vi. The complainant has made a payment of Rs. 6,07,469 vide receipt No. 2016/1400012872 dated 15.03.2017, inclusive of VAT amounting to Rs. 53,358. Thereafter the complainant has paid total amount of Rs 6,00,000 and Rs. 70,045, dated 21.11.2018 vide Receipt No. 2018/1400006306 and receipt No. 2018/1400006307. Thereafter the complainant had

- made a transaction of total amount 1,07,182 and Rs. 50,000, dated 01.12.2018 and having receipt No. 2018/1400040281 and 2018/1400040282. to the Respondents.
- vii. That as per the clause 3 of the buyer's agreement, the Company proposes to hand over the possession of the unit within a period of 36 Months from the date of execution of Flat Buyer's Agreement ("Commitment Period"). The Purchaser Further agrees and understands that the seller/ confirming party shall additionally be entitled to period of 180 days ("Grace Period") after the expiry aid commitment period to allow for finishing work and filing and pursuing the occupancy certificate etc. from DTCP under the act in respect of the project "Park Generations".
- viii. That as per the further demands raised by the Respondents, based on the payment plan, the Complainant in order to buy the captioned unit paid a total sum of Rs. 72,12,450.51 out of the total sale consideration of Rs. 72,27,414.18. That the Complainant had contacted the Respondents on several occasions and were regularly in touch with the Respondents, but the Respondents was never able to give any satisfactory response regarding the status of the construction. The succeeding allottee visited the site multiple times but was shocked to see that there was no progress regarding the construction of the commercial unit. Further, the Respondents was never definite about the delivery of the possession.
- ix. That the possession of the above-mentioned unit was supposed to be offered on 18.10.2016 but the complainant did not receive any Offer of Possession or any Handover over letter despite paying more than 99 % payment to the Respondents.
- x. That after a long delay of 2 years, the Complainant received an Offer of Possession dated 25.10.2018 As per the Offer of Possession, the department of Town and Country Planning Haryana has granted the

Occupancy Certificate for the Captioned unit and the unit was ready for the possession.

- xi. Along with the offer of possession the respondent company has also raised various demands and asked for some documents which needs to be submitted by the complainant for the sake of getting physical handover of the possession.
- xii. The demands which were raised has been fulfilled by the complainant and all the documents required were submitted by the complainant till 2019, but never got acknowledgement of recipient in return from the side of the respondent.
- xiii. In view of this the offer of possession of the Respondent is an illegal offer of possession and loaded with many demands which are not a part of the BBA. It is pertinent to see that the Respondents has increased the basic sale price as agreed in the Builder Buyer's Agreement that was Rs. 52,40,550. It has been increased to Rs. 54,54,22365 in the statement of account.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):

- i. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till the date of actual handing over of physical possession.
- ii. Direct the respondent to provide possession of the flat with all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.
- iii. Direct the Respondents to refund the entire GST amount so charged from Complainant along with interest from date of payment till actual realization of the amount at prescribed rate of interest as per RERA Act,

2016 as the GST was applicable from 01.07.2017 whereas the due date of delivery was prior to the enactment of the GST.

- iv. Direct the Respondents to demand only STP charges along with electrification charges from the Complainant/ allottee @ Rs. 8.85 sq. ft. Further, to club ECC with FCC+PBIC in the Statement of Account-cum-invoice attached with the letter of possession of the allottee @Rs. 100 per sq. feet.
 - v. Direct the respondents to execute the conveyance deed in favour of the complainant.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has made following submissions in the reply:
- i. That the original allottee, being interested in the group housing real estate development Project of the Respondents known under the name and style of "PARK GENERATIONS" located at Sector 37-D, Gurugram, Haryana applied for the allotment of the unit vide an application form dated 04.09.2011.
 - ii. That Pursuant to booking in the said Project, a letter dated 22.06.2012 was sent to the original Allottee inviting him for the selection of the unit. That thereafter, a unit bearing number T3-1704, 17th Floor, Tower T3, tentatively admeasuring 1470 sq. ft. (hereafter referred to as "Unit") was allotted to the Complainant vide Allotment Letter dated 19.12.2012. That the original allottee consciously and wilfully opted for time/construction linked payment plan as per their choice for remittance of the sale consideration for the unit in question.

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- iii. That at this stage, it is imperative to mention here that after the allotment of the unit in favour of the Original Allottee, the Original Allottee and the Complainant requested for transferring of the said unit in favour of the Complainant. That thereafter, the said unit was endorsed in favour of the Complainant vide Endorsement dated 29.07.2013.
- iv. That after transferring of the said unit in favour of the Complainant, a Flat Buyer's Agreement dated 18.10.2013 was duly executed between the Complainant and the Respondents. It is also pertinent to mention that the Flat Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties.
- v. It is categorical to submit here that prior to approaching the Respondents for the booking of the above-noted unit, the complainant had conducted extensive and independent enquiries with regard to the project and only after being fully satisfied, the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents.
- vi. That the rights and obligations of the allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect. It is imperative to note that as the Complainant was fully aware and satisfied with the terms and conditions of the Agreement and agreed to purchase the unit with open eyes after going through the contents of the Agreement.
- vii. That as per clause 3.1 of the Agreement, the due date of offer of possession of the unit was 36 months from the date execution of the Agreement along with a grace period of 180 days, subject however, to the *force majeure* circumstances, intervention of statutory authorities and the

- purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.
- viii. That as the Agreement was executed on 18.10.2013 and hence, the due date is calculated from the same. Thus, the proposed due date for offer of possession comes out to be 18.04.2017 (including the grace period). It is imperative to mention here that the due date of delivery of the unit was subjective in nature and was dependent on the Force Majeure circumstances and the Purchaser/allottee complying with all the terms and conditions of the Agreement along with timely payments of instalments of sale consideration.
- ix. At this stage, it is categorical to note that Respondents was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were

procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondents No.1 to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the Respondents No.1 completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainant and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

- x. That the aforementioned circumstances are in addition to the partial ban on construction. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- xi. That from the facts indicated above and documents appended, it is comprehensively established that a period of 190 days were consumed on account of circumstances beyond the power and control of the Respondents No.1, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the Respondents has been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period

indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the Agreement. In a similar case where such orders were brought before the Hon'ble Authority in the **Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022**, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 252 days need to be rightly given to the Respondents-builder.

- xii. Furthermore, it needs to be seen that the development of the Unit and the Project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the Complainant, which, the Complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the Complainant have delayed the payment against the Unit. That the total sales consideration of the unit was Rs. 77,54,56.91/- out of which the Complainant had/have only made payment of Rs. 72,19,653.74/-.
- xiii. That it was the obligation of the Complainant to make the payments as per the adopted payment plan and agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the Agreement executed between the parties as per clause 11 of the Agreement. That in case of default by the Complainant, the Complainant bound to make the payment of interest. That this obligation has also been noted in the RERA, 2016. The above-mentioned provisions note the mandatory obligation of the Complainant to make the due payments against the Unit, which under no circumstance whatsoever, can be escaped.

- xiv. It is submitted that various demand letters were raised as per the agreed payment plan however, the Complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the Complainant from time to time. That the *bonafide* of the Respondents is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notices in case of non-payment.
- xv. At this stage, it is imperative to mention here that even after various difficulties faced by the Respondents due to the Force Majeure circumstances and delay in payments by the allottees like the Complainant, the Respondents was able to complete the construction of the unit and was thereby able to obtain the occupation Certificate for the Project on 09.10.2018.
- xvi. That after obtaining Occupation Certificate from the concerned Authorities, the Respondents had lawfully offered the possession of the unit to the Complainant on 25.10.2018. At this stage, it is imperative to note that the Offer of Possession provided by the Respondents for the possession of the unit was a valid offer of possession and all the charges levied upon the Complainant by the Respondents were as per the Agreement executed between the parties.
- xvii. That the parties at the time of execution of the Agreement agreed that the super area of the unit was tentative in nature and shall be subject to change as per the construction of the Project and the same shall be determined after the receipt of the Occupation Certificate.
- xviii. Additionally, as per clause 2.4(i) of the Agreement, the Complainant wilfully agreed that he shall not raise any claim, whatsoever against the Respondents if the said increased or decrease in the unit is more than 15%. That in the present scenario, only an increase of 3.5% has been ✓

witnessed (From 1470 Sq. Ft. to 1521 Sq. Ft.). Moreover, the Complainant while purchasing the above-noted unit have executed an Undertaking dated 23.08.2013 as per which the Complainant agreed to the tentative nature of the Layout Plan and Super Area of the unit.

- xix. That at this stage, it is imperative to note that the Complainant, during the execution of the Agreement dated 18.10.2013, agreed to pay the following charges including but not limited to Development Charges, Interest Free Maintenance Charges, Electric connection charges, administrative charges and any other charges which the Respondents and Maintenance Service Provider may demand for any additional services in addition to the Basic Sales Price of the unit. Hence the charges charged by the Respondents in the Offer Of possession dated 25.10.2018 were valid charges which the Complainant is under an obligation to remit in favour of the Respondents as per the Agreement dated 18.10.2023.
- xx. Hence, all the claims put forth by the Complainant in the present complaint are wrong and frivolous. That in light of the *bona fide* conduct of the Respondents, no delay in the construction of the unit, the peaceful possession had already been offered to the Complainants, non-existence of cause of action and the frivolous complaint filed by the Complainants, this Complaint is bound be dismissed with costs in favor of the Respondents. Hence, the present complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

11. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent

- F.I Objection regarding delay in completion of construction of project due to force majeure conditions.**

12. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi but all the pleas advanced in this regard are devoid of merit.
13. In the present matter, the builder buyer's agreement was executed between the parties on 18.10.2013. Therefore, the due date of handing over of possession is taken from the clause 3.1 of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 18.04.2017. The events such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi among others were for a shorter duration of time and were not continuous as there is a delay of around five years and even happening after due date of handing over of possession. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

- i. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till the date of actual handing over of physical possession.
- ii. Direct the respondent to provide possession of the flat with all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.

- iii. Direct the Respondents to refund the entire GST amount so charged from Complainant along with interest from date of payment till actual realization of the amount at prescribed rate of interest as per RERA Act, 2016 as the GST was applicable from 01.07.2017 whereas the due date of delivery was prior to the enactment of the GST.
 - iv. Direct the Respondents to demand only STP charges along with electrification charges from the Complainant/ allottee @ Rs. 8.85 sq. ft. Further, to club ECC with FCC+PBIC in the Statement of Account-cum-invoice attached with the letter of possession of the allottee @Rs. 100 per sq. feet.
 - vi. Direct the respondents to execute the conveyance deed in favour of the complainant.
14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:
- "Section 18: - Return of amount and compensation***
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —
.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."
15. Clause 3 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

3. POSSESSION

*The seller/Confirming Party proposes to handover the physical possession of the said unit to the Purchaser(s) **within a period of 36 months from the date of execution of Flat Buyer's Agreement** ("Commitment Period"). The Purchaser(s) further*

agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for finishing work and filling and pursuing the Occupancy Certificate, etc. from the DTCP under the Act in respect of the project "Park Generations"

16. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within a period of 36 months from the date of execution of Flat Buyer's Agreement ("Commitment Period") and further provided in agreement that promoter shall be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for finishing work and filling and pursuing the Occupancy Certificate, etc. from the DTCP under the Act in respect of the project "Park Generations". The period of 36 months expired on 18.10.2016 (calculating from the date of execution of buyer's agreement i.e., 18.10.2013).
17. The Authority put reliance on the judgement dated 08.05.2023 of Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the

allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

18. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 18.04.2017 including grace period of 180 days.

19. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at the prescribed rate. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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 (MCLR) 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.

20. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest

so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

21. **Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.**

22. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoter which is the same as is being granted to the complainant in case of delayed possession charges.

G.III GST

24. The allottee has also challenged the authority of the respondent- builder to raise demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised

a demand of Rs.1,22,554/- under the head GST which is illegal and is not liable to repeat to be paid by him.

25. Though the version of respondent is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate(C = A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profitteering benefit passed if any till March' 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	0.36%	0.53%	2.99%	0.41%	2.99%	2.99%

26. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as *Parkash Chand Arohi Vs. M/s Pivotal Infrastructure* ✓



Pvt. Ltd. passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

27. In view of the above, the authority is of the view that the respondent/promoters are not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 41 of this order.

G.IV STP charges, electrification and ECC with FF+ PBIC charges.

28. It is contended by the complainant that the respondents raised unreasonable demands under various heads i.e. cost escalation of Rs.

5,45,628/- and ECC+FF+ PBIC of Rs. 1,52,100/- On the other hand, the respondents submitted that such charges have been demanded from the allottee in terms of the flat buyer's agreement.

29. The said issue was also referred to the committee and it was observed as under by the committee:

"Recommendations:

i. *The Committee examined the contents of the FBAs executed with the allottees of Spacio and Park Generation and found that various charges to be paid by the allottees find mention at clause 2.1 (a to h). Neither, the electrification charges figures anywhere in this clause, nor it has been defined anywhere else in the FBAs. Rather, ECC+FFC+PBIC charges have been mentioned at clause 2.1 (f). which are to be paid at INR 100 per sq. ft.*

ii. *The term electric connection charges (ECC) has been defined at clause 1.16 (Spacio) and Clause 1.19 (Park Generation), which is reproduced below:*

"ECC" or electricity connection charge shall mean the charges for the installation of the electricity meter, arranging electricity connection (s) from Dakshin Haryana Bijli Vidyut Nigam, Haryana and other related charges and expenses."

iii. *From the definition of ECC, it is clear that electrification charges are comprised in the electric connection charges and the same have been clubbed with FCC+PBIC and are to be charged @INR 100 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges to the allottees of Spacio in an arbitrary manner and in violation of terms and conditions of the agreement. Accordingly, the Committee recommends:*

A. *The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted and only STP charges be demanded from the allottees of Spacio @ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.*

B. *The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-Invoice shall be amended to that extent accordingly."*

30. The authority concurs with the recommendation made by the committee and holds that the allottee of park generation may be charged in respect of STP charges (@INR 8.85 sq. ft. and ECC+FFC+PBIC (@INR 100 per sq. ft.)

G.V To execute conveyance deed

31. The complainant is seeking relief for the execution of conveyance deed. As per Section 17 (1) and proviso of the Real Estate Regulation and Development Act, 2016 is reproduced below:

"Section 17: - Transfer of Title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

32. The authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainant as per the section 17(1) of the Act, 2016. Since the possession of the allotted unit has already been offered on 25.10.2018 after obtaining occupation certificate on 09.10.2018, so the respondent is directed to get the conveyance deed executed within a period of 3 months from the date of this order as per section 17(1) of the Act of 2016.
33. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. By virtue of clause 3 of the buyer's agreement executed between the parties on 18.10.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of execution of buyer's agreement. For the ✓

reason above, the due date of possession is to be calculated from the date of execution of buyer's agreement 18.04.2017 and as far as grace period of 180 days is concerned, the same is allowed for the reasons quoted above. The respondent has offered the possession of the allotted unit on 25.10.2018 after obtaining occupation certificate from competent Authority on 09.10.2018. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.

34. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 18.10.2013. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
35. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaints, the occupation certificate was granted by the competent authority on 09.10.2018. The respondent offered the possession of the unit in question to the complainant only on 25.10.2018, So it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It



is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 18.04.2017 till the expiry of 2 months from the date of offer of possession 25.10.2018 which comes out to be 25.12.2018.

36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. from the due date of possession 18.04.2017 till 25.12.2018 i.e., expiry of 2 months from the date of offer of possession (25.10.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 18.04.2017 till 25.12.2018 i.e., expiry of 2 months from the date of offer of possession (25.10.2018) as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
 - The arrears of such interest accrued from 18.04.2017 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order as per rule 16(2) of the rules.
 - The respondent/promoter shall handover the physical possession of the allotted unit and execute conveyance deed in favour of the



complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
 - v. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.
38. Complaint as well as applications, if any stands disposed of accordingly.
39. File be consigned to registry.

(Ashok Sangwan)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.02.2025