HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2945 of 2019**
Date of filing:	**19.12.2019**
First date of hearing:	**08.01.2020**
Date of decision:	**05.05.2025**

Anita
W/o Ranjan Mandiwal
R/o 63, Meham Road,
Sir Chhotu Ram Colony, Bhiwani
(Haryana) ....COMPLAINANT

VERSUS

M/s BPTP Limited
Registered office- M-11, Middle Circle,
Connaught Circus,
New Delhi-110001
through its Managing Director .....RESPONDENT

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Sh. Gaurav Singla, Counsel for the complainant.

Sh. Hemant Saini, Counsel for the respondent.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 19.12.2019 by the 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 fulfill 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.	Discovery Park, Sector-80, Faridabad, Haryana
2.	RERA Registered/not registered	Lapsed project Registered vide registration no. 297 of 2017 dated 16-10-2017
3.	Details of allotted unit.	Flat No. K 501
4.	Flat Buyer Agreement	31.10.2012

	with original allottee	
5.	Date of endorsement	29.06.2018
6.	Deemed date of possession	31.10.2015
7.	Amount paid by the complainant	₹68,32,063/-
8.	Occupation certificate received on	31.10.2018
9.	Offer of possession	16.11.2018

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

1. Facts of the present complaint are that the Apartment Buyer's Agreement dated 31.10.2012 was executed between the Respondents and Mridu Khanna and Tanuj Khanna for purchase of Flat No. K-501 in the project "Discovery Park," Sector-80, Faridabad. The total sale consideration agreed was ₹40,62,500/-, with a discount of ₹1,62,500/-, resulting in a net amount of ₹39,00,000/-. Copy of Apartment Buyer's Agreement dated 31.10.2012 executed between the Respondents and Mridu Khanna & Tanuj Khanna is annexed as Annexure C-1.

2. As per Clause 3.1 of the agreement(BBA), the Respondent was to deliver the possession of the flat within 36 months after obtaining all necessary approvals or from the date of execution of apartment buyer agreement, whichever is

later. Clause 3.3 provided for compensation of ₹5/- per sq. ft. of super area per month in case of delayed possession.

3. The original buyers, Mridu Khanna and Tanuj Khanna, transferred their flat to Mrs. Beena Khanna, which was accepted by the Respondents vide letter dated 29.11.2017. Copy of letter dated 29.11.2017 issued by the Respondent confirming transfer of flat in the name of Mrs. Beena Khanna is annexed as Annexure C-2.

4. Subsequently, Mrs. Beena Khanna transferred her flat to the present Complainant in June 2018, which was also accepted by the Respondent. Copy of transfer letter dated June 2018 regarding transfer of flat from Mrs. Beena Khanna to the Complainant is annexed as Annexure C-4.

5. Initially, the Respondent's statements of account dated 04.06.2018 and 20.07.2018 showed a minimal balance outstanding of ₹2,507/- and ₹2,587/- respectively against the Complainant. Copy of statement of account dated 04.06.2018 issued to Mrs. Beena Khanna showing balance of Rs. 2,507/- is annexed as Annexure C-3. A copy of statement of account dated 20.07.2018 issued in the name of the Complainant showing balance of ₹2,587/- is annexed as Annexure C-5.

6. However, unexpectedly, Respondent issued a letter dated 16.11.2018 claiming an outstanding amount of ₹20,04,934/- along with ₹1,83,000/- for stamp duty,

totaling ₹21,87,934/-, a significant increase from earlier account statements. Copy of letter dated 16.11.2018 issued by the Respondent along with statement of account showing outstanding balance of ₹20,04,934/- plus ₹1,83,000/- for stamp duty is annexed as Annexure C-6.

7. Despite the above, the Complainant deposited ₹17,07,710/- on 21.01.2019 and ₹1,83,000/- towards stamp duty on 02.03.2019 as per the demands and receipts issued by the Respondent. Copies of payment receipts dated 21.01.2019 for ₹17,07,710/-. Receipt Nos. 2018/1400007644 and 7645) and 02.03.2019 for ₹1,83,000/- towards stamp duty (Receipt No. 2018/1600009632) are annexed as Annexure C-8.

8. The Complainant also deposited ₹1,80,881/- on 21.02.2019 as per the tax invoice dated 16.11.2018. Copy of tax invoice dated 16.11.2018 and corresponding payment receipt dated 21.02.2019 for ₹1,80,881/- are annexed as Annexure C-9 and C-10.

9. On 26.03.2019, the Respondent demanded pending documents and charges, which the Complainant complied with. Subsequently, on 04.04.2019, the Respondent issued a statement clearing the Complainant of any dues and also issued a No Objection Certificate (NOC). Copies of letter dated 26.03.2019 from Respondent demanding pending documents and charges, payment receipts by Complainant, statement of account dated 04.04.2019 showing nil

dues, and No Objection Certificate dated 04.04.2019 are annexed as Annexure C-11 to C-14.

10. The Complainant repeatedly raised complaints about incomplete and deficient construction work in the flat. However, despite reminders and follow-ups, the Respondent has failed to complete the pending work till date. Copies of emails from Complainant regarding work deficiencies and general reply dated 13.07.2019 from Respondent stating complaint forwarded to concerned team are annexed as Annexure C-15 and C-16.

11. The Complainant has fully discharged all payment obligations as per the Agreement and subsequent demands by the Respondent, but the Respondent have failed to deliver possession within the stipulated period and complete the flat as agreed.

12. The Complainant has also deposited approximately ₹20 Lakhs in excess of the agreed basic sale price, which is unaccounted for and unjustifiably demanded by the Respondent.

13. Therefore, the complainant is entitled to a refund of the excess sale consideration paid along with other charges, with interest at the rate of 18% compounded annually from the respective dates of payments, due to the Respondent's breach of contractual and statutory obligations.

C. RELIEFS SOUGHT

14. That the complainant seek following relief and directions to the respondent:-

i. In the event that the registration has been granted to the Respondent-Promoter for the project namely Discovery Park Sector-80 in Faridabad, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.

ii. In exercise of powers under section 35, direct the Respondent-Promoter to place on record all statutory approvals and sanctions of the project;

iii. In exercise of powers under section 35 of RERA and RULE 21 of HRE(R&D) Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;

iv. To compensate the Complainant for the delay in completion of the work of the flat and refund the excess amount of ₹20 lac approx. along with interest @ 18% compound interest from dates of deposit by the Complainant;

v. To pay compensation of ₹2,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant-Petitioner on account of deficiency in service and unfair trade practices;

vi. The complainant may be allowed with costs and litigation expenses of ₹50,000/-;

vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

15. The respondents submitted a detailed reply contesting the complainants' claims on several grounds.

16. That the present complaint is not maintainable on the ground that:

i. **Lack of Jurisdiction & Improper Forum:**

The complaint pertains to complex contractual disputes that are governed by the Flat Buyers Agreement (FBA) dated 30.10.2012, which contains an arbitration clause (Clause 33). The Complainant has breached this arbitration agreement by filing the Complaint before HRERA without invoking arbitration proceedings as agreed between the parties. Thus, the Complaint is not maintainable before this Hon'ble Authority and ought to be dismissed.

ii. **Complaint Filed Without Clean Hands and Concealment of Material Facts:**

The Complainant has suppressed material facts regarding the purchase of the unit from a subsequent allottee in the secondary market and the waiver of delay compensation rights at the time of endorsement. The Complainant's concealment of such facts is a ground for dismissal of the Complaint.

iii. **Pre-RERA Agreement and Applicability of RERA Act:**

The Flat Buyers Agreement (FBA) was executed on 30.10.2012, prior to the RERA Act coming into force (01.05.2017). It is well settled that transactions and agreements entered into before RERA's effective date are governed by the terms of such agreements and cannot be re-opened or overridden by the RERA Act. Therefore, the Complainant cannot rely on the provisions of the RERA Act to challenge the FBA.

17. The Respondent registered the project "Discovery Park," Sector-80, Faridabad, with HRERA and was issued Registration Certificate No. 297 of 2017 dated 16.06.2017.

18. The original allottee, Mrs. Mridu Khanna, after due diligence, booked the Flat No. K-501 in the project by submitting the application and the FBA was executed on 30.10.2012. The unit was transferred to the subsequent allottee Mrs. Beena Khanna by endorsement dated 01.09.2017. The Complainant, Mrs. Anita, thereafter purchased the unit in resale from the subsequent allottee on 29.06.2018. The complainant conducted her own due diligence before the transaction.

19. The Respondent sent the offer of possession for Unit No. K-501 vide letter dated 16.11.2018. Copy of offer of possession dated 16.11.2018 is annexed as Annexure R/2. The Complainant was required to make the payment within 30 days. The Respondent, being customer-centric, also offered a special discount

of ₹2,77,200/- subject to timely payment. The Complainant, at the time of transfer, agreed to pay the balance sale consideration and expressly waived any claim for delay compensation.

20. The complainant forcefully prevented the Respondent's workers from completing the finishing works, despite the Respondent providing No Objection Certificate (NOC) for fit-outs vide letter dated 04.04.2019. The Complainant has been reluctant and obstructive in allowing the Respondent to carry out the fit-outs, causing unwarranted harassment to the Respondent.

21. Clause 3.7 of the FBA clearly states that the complainant has no right to challenge the specifications or any item of work in the flat. Further, Clause 33 mandates that all disputes arising out of or related to the agreement shall be settled amicably and, failing that, through arbitration at New Delhi, with the sole arbitrator appointed by the Managing Director of the Respondent Company. By agreeing to the terms during the endorsement and transfer, the Complainant waived the right to claim any delay compensation or damages arising out of delayed possession.

Applications dated 05.01.2022 and written arguments dated 03.11.2023

22. Furthermore, the respondent has filed applications dated 05.01.2022 and written arguments dated 03.11.2023, wherein a detailed clarification has been provided regarding the charges raised by the respondent against the unit in

question under various heads such as stamp duty, cost escalation, preferential location charges, club membership, taxes, and others. In the said submissions, the respondent has explained the rationale and contractual basis for levying these charges. It is pertinent to note that no written reply or counter-objection has been filed by the complainant to contest the contents of the respondent's applications. The absence of a rebuttal suggests that the complainant has not disputed these justifications in writing. Accordingly, the Authority has duly considered the contents of the respondent's application and written arguments while adjudicating the present complaint on merits, and to ensure a fair and reasoned determination of the issues involved.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS

23. The learned Counsel for the Complainant referred to paragraph 3 of the order dated 22.08.2023, wherein it was alleged that the demands raised by the Respondent towards enhanced External Development Charges (EEDC), cost escalation, club membership charges, Value Added Tax (VAT), Service Tax, GST, and enhanced area charges due to the increase in the super area of the unit from 1625 sq. ft. to 1848.17 sq. ft. are illegal and arbitrary. The Complainant had also prayed in the said order that directions be issued to the

Respondent to refund the amount paid under these heads, along with applicable interest.

24. He further drew the Authority's attention to the application dated 05.01.2022 filed by the Respondent, in which the Respondent explained the basis for the increase in the unit's super area. He specifically referred to page 7 of the said application, where it is stated that the original super area was 1625 sq. ft., which has now increased to 1848.17 sq. ft. resulting in a difference of 223.17 sq. ft. However, the Complainant has pointed out discrepancies in the Respondent's calculations. According to the Complainant, the difference in the unit area, balcony area, and covered area amounts to 16.21 sq. ft., 56.23 sq. ft., and 72.44 sq. ft., respectively, aggregating to 144.88 sq. ft. This figure is significantly lower than the 223.17 sq. ft. difference claimed by the Respondent, indicating inconsistency in the calculations. He also referred to Clause 12.13 of the Flat Buyer Agreement, which provides that the Respondent can increase the cost of construction only up to 10% of the original estimated cost at the time of allotment.

25. On the other hand, the learned Counsel for the Respondent referred to paragraph 7 of the order dated 04.08.2021, whereby the Respondent was directed to file an application explaining the reasons for the increase in super area and cost escalation. In compliance, an interlocutory application was filed

by the Respondent, wherein a detailed calculation of the unit's area was provided. The Respondent first calculated the covered area, which includes the unit area and balcony area, and arrived at a figure of 1371.44 sq. ft. Thereafter, the common area share was calculated as 476.73 sq. ft. The super area was then determined by adding the covered area and the common area share, i.e., 1371.44 + 476.73 = 1848.17 sq. ft. As per the earlier brochure, the super area of the unit was 1625 sq. ft., and thus, the revised super area of 1848.17 sq. ft. reflects an increase of 223.17 sq. ft., which constitutes a 13.73% escalation. It was further contended that, in accordance with the terms of the Agreement, a variation in super area up to 15% is permissible and since the current increase is within that limit (13.73%), it is legally valid. He also referred to paragraphs 6 and 7 on page 13 of the Respondent's application, where a detailed explanation regarding the reasons for the increase in the super area was provided.

F. ISSUES FOR ADJUDICATION

26. Whether the complainant is entitled to the reliefs sought by her?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

27. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that a flat bearing no. K-501 on 5th floor of Tower K of the respondent's project namely "Discovery

Park" situated in Sector-80, Faridabad was initially allotted to Mridu Khanna and Tanuj Khanna vide buyer agreement dated 31.12.2012. Allotment rights had subsequently transferred to different persons and the present complainant in the sequence if 3rd allottee of the flat. Transfer of allotment rights in her favour were duly endorsed on 29.06.2018 by the respondent who has already received a sum of ₹68,32,063.4/- for the said flat against the basic sale price of ₹39,00,000/-. Occupation certificate was received by the respondent on 31.10.2018

28. Clause 3.1 of the Flat Buyer Agreement is reproduced hereunder;

> *"....the seller/confirming party proposes to handover the physical possession of the unit to the purchaser(s) within a period of 36 months from the date of sanctioning of building plan or execution of flat buyer agreement, whichever is later""*

A plain reading of Clause 3.1 makes it abundantly clear that timely delivery of possession is a fundamental obligation under the agreement between the promoter and the allottee. On perusal of the record, it is noted that the Respondent has filed the written arguments dated 03.11.2023, wherein it is stated that the building plan was revised and sanctioned on 26.09.2018. However, the Respondent has failed to furnish any documentary evidence in support of this claim. In the absence of such proof, the mere assertion of the Respondent lacks evidentiary value and cannot be relied upon. Accordingly,

the Authority deems it appropriate to calculate the deemed date of possession as 36 months from the date of execution of the Flat Buyer Agreement, which is 31.10.2012. Therefore, the deemed date of delivery of possession comes to **31.10.2015**.

29. Respondent has challenged the maintainability of the complaint on following grounds:

Firstly, the Complaint pertains to complex contractual disputes that are governed by the Floor Buyers Agreement (FBA) dated 30.10.2012, which contains an arbitration clause (Clause 33). The Complainant has breached this arbitration agreement by filing the Complaint before HRERA without invoking arbitration proceedings as agreed between the parties.

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been

held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"). Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes,*

which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC. As provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgment passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting

proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."* Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the said objection of the respondent stands rejected.

Secondly, the Complainant has suppressed material facts regarding the purchase of the unit from a subsequent allottee in the secondary market and the waiver of delay compensation rights at the time of endorsement.

Authority observes that neither party has annexed a copy of the endorsement letter dated 29.06.2018, which could clarify the specific conditions being referred to by the Respondent. However, since neither party has disputed the date of endorsement, the Authority considers **29.06.2018** as the date on which the unit was endorsed in favour of the Complainant. As regards the clause referred to by the Respondent, the Authority finds that the same cannot be ascertained in the absence of the endorsement letter. Furthermore, the Authority is of the view that any clause which seeks to waive the statutory rights of the allottee under the Real Estate (Regulation and Development) Act,

2016, is not legally enforceable. Sections 18(1) and 19(4) of the Act confer statutory rights upon the allottee, including the right to timely possession and to claim compensation in case of delay. These provisions are mandatory in nature and cannot be waived by any unilateral declaration or agreement. The Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725,** has held that:

> *"A clause in a contract which is one-sided, unfair and unreasonable and gives the builder an undue advantage, is against the public interest and cannot be enforced merely because it was signed by the buyer."*

In the present case, the Complainant has already paid a substantial sum of ₹68,32,063.41/- towards the basic sale consideration of ₹39,00,000/-. Any clause that purports to waive the Complainant's right to claim delay compensation, particularly after such a significant payment and in the absence of corresponding construction progress, would be one-sided, unconscionable, and contrary to public policy. Accordingly, even if such a clause was signed by the Complainant, it would be contrary to the object and spirit of RERA. The Complainant's statutory right to claim compensation for delay remains intact, and the Respondent cannot escape its contractual and statutory obligations by relying on such a clause.

Thirdly, the Floor Buyers Agreement (FBA) was executed on 30.10.2012, prior to the RERA Act coming into force (01.05.2017). It is well settled that transactions and agreements entered into before RERA's effective date are

governed by the terms of such agreements and cannot be re-opened or overridden by the RERA Act.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force of the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. However, Authority is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act, 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021, it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of flat buyer agreement dated 31.10.2012 is admitted by the respondent. Said flat buyer agreement was binding upon both the parties. As

such, the respondent was under an obligation to hand over possession on or before the deemed date of possession. In captioned complaint, the respondent has obtained the occupation certificate and has handed over the possession to the complainant after the year 2016, after the deemed date of possession. Therefore, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

30. Counsel for respondent has also stated that respondent has duly offered the discount of ₹2,77,200/- to the complainants at the time of booking as a goodwill gesture. In this regard, Authority deems appropriate not to allow refund of the above said amount to the respondents for two fold reasons. Firstly, complainant has not withdrawn from the project and has rather taken possession of the unit. Secondly, since, complainant has performed her part and had taken possession of her unit for which she had paid in advance to respondent for which certain benefits were credited by respondent to complainant. Now, respondent cannot be allowed to take those amounts back since complainants had completed their part of the agreement, however respondents has failed to abide by terms of agreement.

31. **Another issue that requires adjudication by the Authority is whether the offer of possession made by the Respondent on 16.11.2018 is legally valid or not?**

The Authority observes that, under the Real Estate (Regulation and Development) Act, 2016, a valid offer of possession must be accompanied by the issuance of the Occupation Certificate from the competent authority. In the present complaint, the Respondent, through its application dated 03.11.2023, has submitted that it obtained the Occupation Certificate on 31.10.2018. The Complainant has neither disputed the date of receipt of the Occupation Certificate nor raised any objection in this regard. Accordingly, the Authority finds it appropriate to conclude that the offer of possession made by the Respondent on **16.11.2018** is legally valid, as it was supported by the Occupation Certificate dated **31.10.2018**.

32. The main grievance of the complainant is that the respondent has issued a Statement of Account, annexed as Annexure C-6 at page no. 51 of the complaint book, wherein a demand of ₹20,04,934.53/- has been raised. This amount has been claimed under various heads, namely enhanced external development charges (EEDC), preferential location charges (PLC), cost escalation, value added tax (VAT), goods and services tax (GST), stamp duty, club membership charges, service tax, and enhanced area charges arising from the increase in the super area of the unit from 1625 sq. ft. to 1848 sq. ft. The complainant has contended that these demands are arbitrary, illegal, and not supported by any valid justification or lawful basis and the respondent

shall be directed to refund the same to the complainant. Objection to each illegal demand raised by complainant is dealt with at length in following manner:-

a. ***Change in super area from 1625 sq. ft. to 1848 sq. ft.***

The Authority has carefully examined the objection raised by the complainant regarding the increase in the super area of the allotted unit from 1625 sq. ft. to 1848.17 sq. ft. In this regard, it is pertinent to refer to the relevant clauses of the Flat Buyer Agreement executed between the parties.

> *"Clause 2.1- .....with an approximate super area of 1625 square foor (150.966 sq. mtrs.), (the areas are tentative lay out and are subject to change till grant of occupation certificate by the Authority)...."*
> *"Clause2.4(i) .....in case, there is any variation of more than 15% in the agreed super area contained in Para 2.1 above and the purchaser is unwilling to accept the changed super area by way of refusing to pay the enhanced sale consideration or by accepting the refund for the changed super area, the allotment shall automatically be treated as terminated....."*

Clause 2.1 of the flat buyer agreement clearly indicates that the area mentioned in the agreement is tentative in nature and liable to change till the finalization of the project and issuance of the occupation certificate and Clause 2.4 (i) of the flat buyer agreement implies that a variation in the super area is permissible up to a maximum of 15%, and any increase within this threshold is contractually acceptable.

In compliance with these provisions, the respondent, vide its application dated 05.01.2022, has placed on record a detailed calculation explaining the basis for the revised super area. As per the said application, the revised super area has been determined as 1848.17 sq. ft., thereby reflecting an increase of 223.17 sq. ft. over the originally agreed area of 1625 sq. ft. On calculating the percentage increase, the variation amounts to 13.73%, which is within the permissible limit of 15% as specified under Clause 2.4(i) of the Agreement. The Authority notes that the respondent has not breached any contractual obligation in this regard and has acted in accordance with the specific provisions of the Flat Buyer Agreement. Accordingly, the Authority finds that the increase in the super area from 1625 sq. ft. to 1848.17 sq. ft. is in consonance with the terms and conditions of the Agreement and is deemed to be valid and legally sustainable.

b. Increase in basic sale price of the unit

That relevant portion of clause 2.1 of the agreement, reads as *"...as per tentative layout plan of the Flat Annexure-B and specifications as per Annexure "C" attached for and in lieu of receiving the consideration calculated at a basic sale price Rs. 2500/- per square foot amounting to a total of ₹4,062,500/- herein referred to as the Basic Sale Price"*. The Authority observes that the respondent, in its application dated 05.01.2022,

has provided a detailed calculation regarding the increase in the Basic Sale Price (BSP) owing to the increase in the super area of the unit. As already noted in para 32(a), the super area was increased from 1625 sq. ft. to 1848.17 sq. ft., leading to an enhancement of 223.17 sq. ft. Applying the BSP rate of ₹2,500/- per sq. ft. as specified in Clause 2.1 of the agreement, the additional consideration payable on account of the increased super area would amount to ₹5,57,000/- (223 sq. ft.×₹2,500 per sq. ft.). However, from the statement of account annexed by the complainant and documents on record, it is evident that the respondent has only charged ₹4,45,700/- towards the increased basic sale price (exclusive of applicable taxes). In light of the above, the Authority concludes that the increase in the Basic Sale Price, as charged by the respondent, is in line with the contractual provisions and does not suffer from any arbitrariness or illegality. The computation is proportionate to the increase in super area and adheres to the agreed pricing terms. Therefore, the demand of ₹4,45,700/- on this account is deemed valid and legally sustainable.

c. ***Preferential location charges (PLC) amounting to ₹1,38,600/-***

The Authority verified whether the Preferential Location Charges (PLC) levied by the respondent amounting to ₹1,38,600/- have been correctly calculated in accordance with the terms of the Flat Buyer Agreement. To

determine the validity of this charge, the Authority referred to Clause 2.1(b)(iv) of the Flat Buyer Agreement, which clearly stipulates: *"Third floor to Fifth floor @ Rs.75.00/- per square foot."* It is an admitted fact that the complainant's unit falls within the said floor bracket and is therefore subject to PLC at the specified rate. The Authority further examined the respondent's explanation provided in its application dated 05.01.2022, wherein it has been stated that the PLC has been calculated on the basis of the revised super area of the unit, which increased to 1848 sq. ft. Consequently, applying the agreed PLC rate of ₹75 per sq. ft. on the revised super area results in a total charge of ₹1,38,600/- (i.e., 1848 sq. ft. × ₹75/sq. ft.). The Authority finds that this calculation is in line with the express contractual provision of the agreement, and the increase in super area directly impacts the quantum of PLC as per the terms mutually agreed upon at the time of agreement. Therefore, the Authority holds that the demand of ₹1,38,600/- towards PLC has been rightly and lawfully charged by the respondent as per clause 2.1(b)(iv) read with Clause 1.34 of the agreement.

d. Value added Tax (VAT)

Authority is of the view that respondent has charged Value Added Tax (VAT) from the complainant. With regard to the same, Authority is of the view that VAT charged by the respondent is a government tax, therefore, the

complainant is liable to pay it. As per clause 2.1(g) read with clause 1.40 of the agreement, complainant is obligated to pay VAT to the respondent.

e. Goods and Services Tax (GST)

Authority is of the view that deemed date of possession in this case is 31.10.2015 and charges/taxes applicable on said date are payable by complainant. Fact herein is that GST came into force on 01.07.2017, i.e., post deemed date of possession. So, the complainant is not liable to pay GST charges. Accordingly, respondent is directed to refund an amount charged on account of GST with interest to the complainant. However, the complainant has failed to annex any documentary proof or receipt evidencing the exact date and quantum of the amount paid towards GST. Nevertheless, the respondent has not disputed the fact of receipt of GST payment, thereby implying acknowledgment of the same. In light of this, the Authority directs the respondent to refund the amount collected on account of GST to the complainant, along with interest at the rate of 11.10% per annum, calculated from the date of such payment till the date of this order, i.e., 05.05.2025.

f. Cost Escalation charges

With regard to the **cost escalation charges,** it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 31.10.2015. The respondents issued a letter offering possession on 16.11.2018

which is a valid offer of possession as it was accompanied by occupation certificate dated 31.10.2018, however the offer of possession is made after the delay of 3 years despite the deemed date of possession being in 2015. In said offer, the respondent also imposed cost escalation charges, which is unjust since the delay in offering possession and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainant. The complainants, having already endure 3-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. Courts have consistently ruled that developers cannot impose additional financial burdens on homebuyers for delays caused by the developers themselves. Therefore, demand raised by the respondent on account of cost escalation charges shall be set aside. The Authority observes that the complainant has paid an amount of ₹4,78,884/- towards cost escalation to the respondent on 21.01.2019. Accordingly, the Authority directs the respondent to refund the said amount of ₹4,78,884/- along with interest of ₹3,34,519/-, calculated at the rate of 11.10% per annum from the

date of payment, i.e., 21.01.2019, till the date of decision, i.e., 05.05.2025. The total amount payable to the complainant comes to ₹8,13,403/-.

g. Stamp Duty charges amounting to ₹1,83,000/-

The complainant has also raised an objection regarding the demand of ₹1,83,000/- on account of stamp duty charges. The Authority observes that stamp duty is a statutory levy imposed by the government for the execution and registration of the conveyance deed in favour of the allottee. It is well settled that such government-imposed taxes and charges are the responsibility of the purchaser unless otherwise agreed in the contract. As per clause 6.4 read with clause 1.37 of the agreement, complainant is obligated to pay stamp duty to the respondent.

h. Enhanced External Development Charges (EEDC)

The respondent has charged 'Enhanced External Development Charges (EEDC)' from the complainant of an amount of ₹1,92,562/-. The respondents at no point of time raised such a demand and the same was raised only in the year 2018 (almost after the three year of deemed date of possession). Moreover, the Complainant was never at any point of time being intimated by the respondents about such charging of the Enhanced EDC. Therefore, the Complainant was taken at surprise by the Statement of Account dated 16.11.2018 where the Complainant was asked to pay the Enhanced EDC

amount of ₹1,92,562/-. The EEDC charge is stayed by the DTCP. The DTCP had ordered respondent to deposit the amount charged as EEDC or refund the amount but respondent neither deposited the amount nor refunded the amount to the complainant. Therefore, respondent is directed to pay back an amount of ₹1,92,562/- charged on account of EEDC.

i. ***Club Membership charges amounting to Rs. 75000/-***

The complainant has raised an objection regarding the demand of ₹75,000/- towards Club Membership Charges. The Authority notes that the possession of the unit was taken by the complainant in the year 2019. However, neither the complainant nor the respondent has placed on record any evidence or submission to confirm whether the club facility is actually developed and operational in the project. In the absence of any conclusive documentation or proof about the existence and functional status of the club, the Authority deems it necessary to adopt a contingent approach. Accordingly:

- **If the club is in existence and operational**, the respondent shall be considered to have rightfully levied the Club Membership Charges as such facilities form part of common amenities offered within group housing projects.
- **However, if the club does not exist or is non-operational**, the respondent shall be liable to refund the amount to the complainant along with interest at

the prescribed rate under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. However, the complainant has failed to annex any documentary proof or receipt evidencing the exact date and quantum of the amount paid towards Club Membership Charges. Nevertheless, the respondent has not disputed the fact of receipt of Club Membership Charges payment, thereby implying acknowledgment of the same. In light of this, the Authority directs the respondent to refund the amount collected on account of Club Membership Charges to the complainant, along with interest at the rate of 11.10% per annum, calculated from the date of such payment till the date of this order, i.e., 05.05.2025.

33. Now, issue which remains to be adjudicated is delay interest. Respondent had offered valid possession of unit after receipt of occupation certificate on 16.11.2018. However, said offer of possession is made after the delay of 3 years as deemed date of handing over of possession was 31.10.2015. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand and the respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession i.e., 31.10.2015 up to the date of

valid offer of possession after receipt of occupation certificate, i.e., 16.11.2018. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

34. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

"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".

35. 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;

36. 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 (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".*

37. Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 05.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

38. Hence, Authority directs the 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 the due date of possession i.e. 31.10.2015 to date of valid offer of possession, i.e., 16.11.2018.

39. Authority has got calculated the interest on total paid amount from due date of possession i.e., from the due date of possession i.e. 31.10.2015 to date of valid

offer of possession, i.e., 16.11.2018, which works out to **₹13,69,197/-** as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.11.2018 (in ₹)
1.	39,05,718/-	31.10.2015 (deemed date of possession)	13,21,984/-
2.	2,50,000/-	06.03.2017	47,213/-
Total	**41,55,718/-**		**13,69,197/-**

Note- The Authority observes that the complainant has stated in the pleadings that a sum of ₹49,21,277/- was paid to the respondent at the time of endorsement. However, the complainant has only annexed receipts totaling ₹41,55,718/-. Accordingly, the Authority deems it appropriate to calculate interest only on the verified amount of ₹41,55,718/-. It is further noted that this amount was paid by the complainant prior to the valid offer of possession dated 16.11.2018. Therefore, the Authority calculates interest on this amount for the period from the deemed date of possession till the date of valid offer of possession. As for the remaining payment, which was made after the valid offer of possession, no delay possession charges shall be given to the complainant.

40. Further, with regard to the relief sought by the complainant mentioned in Para 14 (i), (ii) and (iii) of this order, the complainant has neither pressed upon nor argued during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

41. The complainant is also seeking compensation of Rs.2,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant-Petitioner on account of deficiency in service and unfair trade practices and costs and litigation expenses of Rs.50,000/-. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

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

1. Respondent is directed to pay delay interest of ₹**13,69,197/-** to the complainant towards delay caused in handing over the possession.
2. Respondent is directed to refund the amounts directed by the Authority at para 32 (e), (f), (i) of the order.
3. The respondent shall issue fresh statement of account to the complainant(s) incorporating therein the principles laid down in this order within 30 days of uploading of this order.
4. Further respondent is directed to execute the Conveyance Deed within 90 days of the order.

43. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]