

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

Complaint no.: 3122 of 2023
Date of filing: 17.07.2023
Order pronounced on: 28.03.2025

Alok Kulshreshtha

R/o: -20376, River Bank St, Sterling, VA, 20165, USA

Complainant

Versus

BPTP Limited

OT-14, 3rd Floor, Nest Door, Parklands, Sector - 76,
Faridabad, Haryana - 121004

Countrywide Promoters Pvt. Ltd.

OT-14, 3rd Floor, Nest Door, Parklands, Sector - 76,
Faridabad, Haryana - 121004

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sukhbir Yadav (Advocate)

Shri Harshit Batra (Advocate)

Complainant
Respondents

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, 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 tabular form:

S. No.	Heads	Description
1.	Name of the project	"Spacio", Sector 37D, Gurugram, Haryana
2.	Project area	43.588 acres
3.	DTCP license no.	83 of 2008 issued on 05.04.2008
	Validity of license	04.04.2025
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others
	Licensed area	23.814 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020
5.	Unit no.	Q-1803, 18 th floor, tower-Q (Page no. 42 of complaint)
6.	Unit admeasuring	1225 sq. ft. (Page no. 42 of complaint)
7.	Revised unit area	1303 sq. ft. (as per offer of possession on page no. 115 of reply)
8.	Date of execution of flat buyer's agreement	04.04.2011 (Page 33 of complaint)
9.	Possession clause	"3. Possession"

		<p>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/confirming party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. As prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of execution of agreement of the Flat or from the date of sanctioning of building plans. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.</p> <p>(Emphasis supplied).</p>
10.	Date of sanctioning of building plans	Not available
11.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement	<p>04.10.2014</p> <p>(Calculated from the date of execution of the agreement, as the</p>

		date of sanction of the building plans has not been made available on record) ➤ Grace period is allowed
12.	Total sale consideration	Basic - Rs 33,68,750/- (on page no. 42 of the complaint) Rs. 60,08,714/- page 36 of reply
13	Total amount paid by the complainant	Rs 44,36,109/- (on page no. 36 of reply)
14	Occupation certificate	15.01.2021 (on page no. 127 of reply)
15	Offer of possession	29.01.2021 (on page no. 130 of reply)

B. Facts of the complaint

3. The complainant has submitted as under:

- That in October 2010, the Complainant came to know about the project "Spacio Park-Serene" being developed by the above-mentioned respondents through an advertisement and they were willing to purchase a flat in the said project, therefore, the Complainant went through the advertisement and contacted the marketing staff of the respondent(s).
- Thereafter, the Complainant visited the project site as well as the sales office of the respondents, there the marketing staff of the respondent(s) allured the Complainant by presenting a rosy picture of the project "Spacio Park-Serene.

- iii. That being allured by the presentation and assurance of the respondents' marketing staff, the Complainant i.e., Alok Kulshreshtha on 03.12.2010, booked a Flat No. Q-1803 in Tower – Q having a Super area of 1225 sq. ft. in the Project "Spacio Park-Serene" situated at Sector-37D, Gurugram, and made a payment of Rs. 3,36,875/- against the booking amount and the payment receipt for the same was issued by the respondent No. 1 on 14.12.2010. It is pertinent to mention here that said the flat was booked at BSP @ Rs. 2750/- per sq. feet for a total sale consideration of Rs. 33,68,750/- under the construction linked payment plan.
- iv. Thereafter, on 20.01.2011, a further payment of Rs. 3,71,500/- was made by the Complainant, and respondent No. 1 issued the payment receipt for the same on 28.01.2011.
- v. That on 14.02.2011, an allotment cum demand letter for Flat No. Q-1803 on 18th floor in Tower-Q in the name of the Complainant was issued by the respondent(s) and in the said letter a demand of Rs. 6,61,613/- was raised by the respondent(s) and the same was paid by the complainant on 01.03.2011 through Cheque and the payment receipt was issued by the respondent(s) on 08.03.2011.
- vi. Thereafter, on 04.04.2011, a Flat Buyer Agreement w.r.t. the unit allotted to the Complainant was executed inter-se the respondents and the Complainant. As per clause No. 3.1 of the said Flat Buyer Agreement, the respondents have to give possession within 36 months from the date of booking/registration of the flat. It is pertinent to mention here that the said flat/unit was booked on 03.12.2010, therefore, the due date of possession was 02.12.2013.

- vii. That the Complainant kept on paying all the demands as and when raised by the respondent(s) as well as per the payment plan. It is pertinent to mention here that the Complainant never hold any of the payments with themselves and made all the payments on time.
- viii. In January 2014, the complainant (Alok Kulshreshtha) telephonically contacted the respondent several times and reiterated all his concerns pertaining to the possession of the unit purchased by the Complainant. It is pertinent to mention here that the respondent(s) were giving lame excuses about not delivering of the unit to the Complainant and have failed to give the possession on or before the due date of possession.
- ix. That on 07.10.2020, the respondent(s) issued a statement of account in the name of the Complainant, and as per the statement of account, the Complainant has paid Rs. 44,36,108/- which is more than 100% of the total sale consideration and yet, the possession of the unit of the complainant has not been delivered to them.
- x. Thereafter, on 29.01.2021, the respondent(s) issued an offer of possession for the unit bearing no. Q-1803 on the 18th Floor in tower-Q situated at the "Spacio, Park -Serene", Sector-37D, Gurugram. It is pertinent to mention here that the respondent(s) increased the area of the Complainant's unit from 1225 sq. ft to 1303 sq. ft. by including the proportionate area of the common facilities (i.e., clubhouse, swimming pool, etc.) without informing and obtaining the consent of the Complainant and without any justification. It is further pertinent to highlight here that the respondent(s) have levied various illegal charges in the said offer of possession under the heads of cost escalation, electrification charges, Service Tax, GST, and so on, and have raised a

demand of Rs. 11,49,573/- (Eleven Lacs Forty-Nine Thousand Five Hundred and Seventy-Three) which is not acceptable at all since the statement of account dated 07.10.2020 shows that the Complainant has paid more than 100% of the total sale consideration. Moreover, the respondent(s) have sent an Indemnity Bond cum undertaking, along with the said offer of possession, and have asked to sign the same which is against the law and rights of the allottees. It is pertinent to mention here that the contents of the said Indemnity Bond are arbitrary and in the favor of the respondents only. It is pertinent to mention here that despite a long delay in the offer of possession, the Respondent did not credit the delayed possession interest in the alleged offer of possession and levied illegal charges, therefore, said offer of possession is not a valid offer of possession.

- xi. That the Complainant had purchased the flat with the intention that after delivery of possession, their family will live in their flat. That it was promised by the Respondent party at the time of receiving payment for the flat that the possession of a fully constructed flat along with Basement and Surface Parking, Landscaped lawns, club/ Pool, School, EWS, etc. as shown at the time of sale, would be handed over to the Complainant as soon as construction work is complete i.e. by 02.12.2013. Thereafter, Respondent(s) assured to Complainant that the physical possession of the flat will be handed over by March 2014.
- xii. That the work on other amenities, like External, and Internal MEP (Services) has yet not been completed. Now it is more than 12 years from the date of booking and the construction of the towers is still not



fully completed. It clearly shows negligence on the part of the builder. As per project site conditions, it seems that the project could take one more year (or longer) to complete in all respect (exterior painting, the entrance gate to the project, clubhouse, and sports facilities are yet not complete), subject to the willingness of the Respondents to complete the project.

- xiii. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the Respondent party and as such, they are liable to be punished and compensate the Complainant.
- xiv. That, for the first time cause of action for the present complaint, arose in April 2011, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on Complainant. Second-time cause of action arose in December 2013, when the Respondent(s) Party failed to hand over the possession of the flat as per the Builder Buyer Agreement. Further, the cause of action again arose on various occasions, including on a) May 2016; b) Jan. 2018; c) Jan 2020, d) March 2021, e) Jan 2022, f) December 2022, g) March 2023 and on many times to date, when the protests were lodged with the Respondents Party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time, as this Authority restrains the Respondent's Party by an order of injunction and/or passes the necessary orders.
- xv. That the Complainant do not want to withdraw from the project. The Promoter has not fulfilled his obligation therefore as per obligations on



the promoter under sections 11(4), 12, 18, and 19(3) the promoter(s) are obligated to pay delayed possession interest to the allottee.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to give delayed possession interest from the due date of possession till the actual handover of the flat, with all amenities as specified in the brochure and builder buyer agreement
 - ii. Direct the Respondent to issue a fresh offer of possession after the withdrawal of arbitrary demands, correcting errors of omission and commission in the computation of various amounts, and after the credit of delayed possession interest from the due date of possession till the date of the fresh offer of possession or handover of possession, whichever is later.
 - iii. Direct the Respondent to give physical possession of the flat (complete in all respect as per BBA and Brochure).
 - iv. To get an order in their favor by restraining the Respondent(s) from charging Cost escalation (cost escalation is wrongly computed).
 - v. To get an order in their favor by restraining the Respondent(s) from charging STP and electrification charges (As per BBA, electrification is already included in other head and builder demanded STP charges without actual cost certificate from a cost accountant or Architect and cost bifurcation).
 - vi. Restraining the Respondents from charging GST as the due date of possession was much before July 2017 as the GST was implemented from July 2017 only.



5. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

6. The respondents have contested the complaint on the following grounds:
- i. That the complainants being interested in the group housing project of the respondent no. 1 known as "SPACIO – PARK SERENE" applied for the purchase of the unit in the project vide application form dated 03.12.2010. Pursuant thereof, the complainants were allotted a tentative unit bearing no. Q-1803, Tower Q admeasuring tentative super area of 1225 sq. ft.
 - ii. At respondent no. 2 be deleted from the array of parties as it is merely a confirming party to the Agreement. Moreover, no reliefs are sought by the complainants against respondent no. 2. Hence, respondent no. 2 shall be deleted from the array of parties.
 - iii. That thereafter, a Builder Buyer Agreement was executed between the complainants and the respondents on 04.04.2011. As per Clause 3.1 of the Agreement, the due date of offer of possession of the unit was 36 months from the date of booking/registration of the unit along with a grace period of 180 days subject to the various force majeure circumstances and timely remittance of outstanding dues by the complainants.
 - iv. That, as the booking of the unit was done by the complainants on 03.12.2010 the **proposed** due date of offer of possession of the unit comes out to be 03.12.2010. The construction of the unit was hampered

due to and was subject to the happening of the force majeure circumstances and other circumstances beyond the control of the respondent.

- v. That a period of 292 days were consumed on account of circumstances beyond the power and control of respondent 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 respondent no.1 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 completion of construction as has been provided in the Agreement.
- vi. That it must also be noted that the respondent no. 1 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per Clause 10 of the Agreement
- vii. That it was the obligation of the complainants to make the payments as per the agreed terms and conditions of the agreement. That timely payment was the essence of the Agreement executed between the parties and in case of default by the complainants, the complainants were bound to make the payment of interest.
- viii. That the complainants delayed in remitting the due instalment on time due to which various demands and reminder letters were also issued in favour of the complainants. The respondents sent various demands and reminder letters in order to inform the complainants regarding the due instalments.

- ix. That the complainants failed to make payment of the instalments against the total sales consideration of the unit and hence, the complainants cannot be allowed to take benefit of her own wrong and the present complaint is thus liable to be dismissed with costs on this ground alone.
- x. That despite innumerable hardships, respondent no.1 completed the construction of the project and attained the Occupation Certificate on 15.01.2021. That respondent no.1 legally offered possession of the unit to the complainants on 29.01.2021. It is pertinent to mention that vide letter dated 29.01.2021 regarding the offer of possession, the complainants were also asked to make the requisite payments based on the Statement of final dues. However, the complainants never turned up to take the possession of the unit or remit the outstanding sales consideration of the unit.
- xi. That the *bonafide* of the respondents are categorical to note at this stage that the respondent no.1 had at the time of Offer of Possession already credited an amount of Rs.4,23,032/- on account of delayed compensation
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 entire Gurugram District for all purpose 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 allottee as per 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

11. So, in view of 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 complainant at a later stage.

F. Findings on the objections raised by the respondents:**F.I. Objection regarding wrongful impleadment of respondent no.2 in the array of parties.**

12. The respondents have raised an objection of wrongful impleadment of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent no.1 stated that respondent no. 2 is only a confirming party in the Agreement and no specific relief has been sought by the complainant from respondent no.2.
13. As per record available the respondent no.2 is a Confirming party to the Agreement dated 04.02.2011 and was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 83 of 2008 and 94 of 2011. The respondent no. 2 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
14. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -
- "2. Definitions.** — In this Act, unless the context otherwise requires —
- (zk) "promoter" means, —
- (i)
- (ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures there; or
- (iii) xxx
- (iv) xxx
15. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been

bought by the buyers. In view of the same, the contention/objection of respondent no.1 stands rejected.

F.II Objection regarding Force Majeure circumstances:

16. The respondent no.1 has raised the contention that the construction of the project, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water. The plea of the respondent no.1 regarding various orders of the NGT and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent no.1 leading to such a delay in the completion. Thus, the respondent no.1 cannot be given any leniency based on aforesaid reasons as it is well settled principle that a person cannot take benefit of his own wrong.
17. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that:
- 69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*
18. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 04.10.2014 and the respondents are claiming benefit of lockdown which

came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant

- i. Direct the respondent to give delayed possession interest from the due date of possession till the actual handover of the flat, with all amenities as specified in the brochure and builder buyer agreement.
- ii. Direct the Respondent to issue a fresh offer of possession after the withdrawal of arbitrary demands, correcting errors of omission and commission in the computation of various amounts, and after the credit of delayed possession interest from the due date of possession till the date of the fresh offer of possession or handover of possession, whichever is later.
- iii. Direct the Respondent to give physical possession of the flat (complete in all respect as per BBA and Brochure).
- iv. To get an order in their favor by restraining the Respondent(s) from charging Cost escalation (cost escalation is wrongly computed).
- v. To get an order in their favor by restraining the Respondent(s) from charging STP and electrification charges (As per BBA, electrification is already included in other head and builder demanded STP charges without actual cost certificate from a cost accountant or Architect and cost bifurcation).

- vi. Restraining the Respondents from charging GST as the due date of possession was much before July 2017 as the GST was implemented from July 2017 only.

G.I ,G.II and G.III Delay possession charges and physical possession of the unit.

19. All the reliefs sought by the complainant are being considered together. In the present complaint, the allottee intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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, सत्यमेव जयते 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."

20. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"3. Possession

*3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/confirming party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. As prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, **the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from***

the date of execution of agreement of the Flat or from the date of sanctioning of building plans. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.

(Emphasis supplied)

21. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking/registration of the flat. The booking of the flat was made on 04.04.2011. Therefore, the due date of handing over possession comes out to be 04.04.2014. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP.
22. 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 Lamd 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."

23. 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 04.10.2014 including grace period of 180 days.
24. 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 lead complaint, the occupation certificate was granted by the competent authority on 15.01.2021. However, the respondent offered the possession of the unit in question to the complainants only on 29.01.2021. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the allottee should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants 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

04.10.2014 till 29.03.2021 i.e., expiry of 2 months from the date of offer of possession (29.01.2021) 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.

25. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges. 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.

26. The legislature in its wisdom in the subordinate legislation under the provision of 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.

27. 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., 28.03.2025 is 11.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.10%.



28. The definition of term 'interest' as defined under section (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;"*

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

G.IV Cost escalation

30. The complainant has pleaded that the respondents also imposed escalation cost Rs. 7,66,164/- after an increase in super area from 1225 sq. ft. to 1303 sq. Ft. without increasing the carpet area.
31. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. Ft. No objections to the report have been raised by either

of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, builder buyer agreement and the issues raised by the promoters to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq.ft. to the allottees of the project. The relevant recommendation of the committee is reproduced below:

"Conclusion:

In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer."

32. The authority concurs with the recommendations of the committee and holds that the escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

G.V GST

33. The allottee has also challenged the authority of the respondents' builders to raised 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.2,02,430/- under the head GST which is illegal and is not liable to repeat to be paid by him.
34. Though the version of respondents 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 allottees the applicable combined rate of VAT and service

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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%

35. 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 reasons: (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."

36. In appeal no. 21 of 2019 titled as **M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi, Haryana Real Estate Appellate Tribunal, Chandigarh** has upheld the **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.** (supra). The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."

37. In the present case, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the



view that the respondents/promoters were 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.

G.VII STP charges and electrification.

38. The respondent issued an offer of possession letter to the complainant along with various unjust and unreasonable demands under various heads i.e. cost escalation of Rs.7,66,164/-, electrification and STP charges of Rs.1,04,240/-. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.
39. 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."*

40. The authority concurs with the recommendation made by the committee and holds that 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 @ Rs.8.85 sq. ft. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

H. Directions of the authority

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents are directed to pay delayed possession charges against the paid-up amount at the prescribed rate of interest @11.10% p.a. for every month of delay from due date of possession i.e., 04.10.2014 till 29.03.2021 i.e., expiry of 2 months from the date of offer of possession (29.01.2021) 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.
 - ii. Also, the amount of loyalty bonus and the amount of delay compensation of Rs.4,23,032/- shall be adjusted towards the delay possession interest amount as 'referred'.

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- iii. The arrears of such interest accrued from 04.10.2014 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.
- iv. The rate of interest chargeable from the allottees 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 (za) of the Act.
- v. Upon issuance of fresh statement of account by the respondent promoter after adjustment of interest for the delayed period and in terms of principles incorporated in the present order, the complainant is directed to pay outstanding dues, if any, within a period of 60 days from intimation of revised statement of account. Thereafter, the complainant is directed to pay outstanding dues, if any, as per section 19(6) and (7) of the Act of 2016.
- vi. 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.
- vii. However, the promoter shall neither pay delayed possession charges nor shall charge delayed payment charges, if any, from the allottees for period of 6 months w.e.f. 25.03.2020 till 24.09.2020 due to restrictions imposed due to Covid-19 situation.
- viii. **Cost escalation:** The authority is of the view that escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

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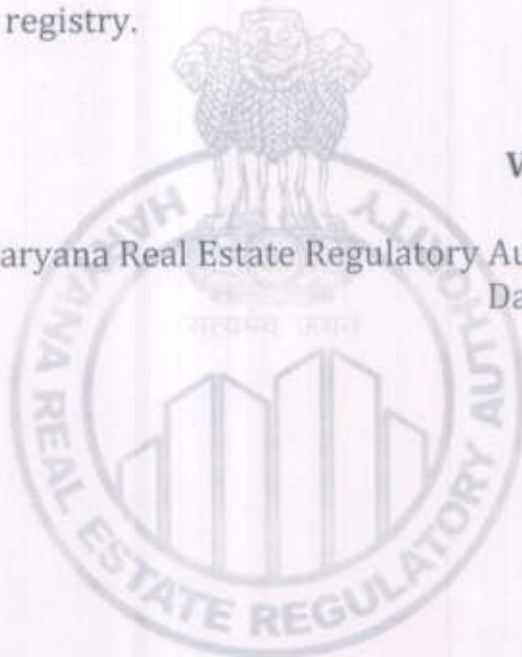
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- ix. The respondents are directed to charge the charges with regard to GST, STP and electrification charges as elaborated in para 37 to 40 of this order.
- x. The respondents shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement.

42. Complaint stands disposed of.

43. Files be consigned to registry.


Vijay Kumar Goyal
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.03.2025



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