

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

**Date of Decision: -25.04.2025**

NAME OF THE BUILDER		BPTP Limited & Country Wide Promoters Private Limited	
PROJECT NAME		"Terra", Sector- 37-D, Gurugram Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/7694/2022	Rupak Kumar Lohit and Bipasha Bhatia Lohit VS. BPTP Limited & Country Wide Promoters Private Limited	Adv. Priyanka Agarwal (Complainant) Adv. Harshit Batra (Respondent)
2.	CR/7902/2022	Astha Bhatia Reddy and Sudheer Ponnathota Reddy VS. BPTP Limited & Country Wide Promoters Private Limited	Adv. Priyanka Agarwal (Complainant) Adv. Harshit Batra (Respondent)

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**ORDER**

- The order shall dispose off both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, Terra", Sector-37-D, Gurugram Haryana being developed by the same respondent-promoter i.e. BPTP Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in all these cases

pertains to failure on the part of the respondent/promoter to pay delay possession charges as per the terms of the builder buyers agreement, seeking possession along with interest and other reliefs.

- The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

<b>Possession clause 5.1</b> The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period. The Seller/Confirming Party shall be additionally entitled to a <b>Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</b> <b>1.6 "Commitment Period"</b> shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC). Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) <b>within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</b>						
Occupation certificate not received yet.						
Sr. No	Complaint No./Date of filing/ Reply status	Unit/shop no. and area	Date of execution of builder buyer's agreement	Due date of possession	Basic Sale Price	Paid-up amount
1	CR/7694/2022 Filing on:- 21.12.2022 RR:- 29.12.2023	T-22-2002-Tower 22 1998 sq. ft. [As per page no. 46 of reply] 2213 sq. ft. - as per offer of possession (increase is 10.5%)	17.12.2012	17.12.2016	Rs. 1,04,89,500/- [as per page no. 47 of reply] Rs. 1,33,16,500/- as per SOA dated 11.07.2022 on page 76 of the complaint	Rs. 1,30,69,437/- [as per SOA dated 11.07.2022 on page 76 of complaint]  Offer of possession:- 13.10.2023



2.	CR/7902/2022 Filing on:- 21.12.2022 RR:- 29.12.2023	T-22-2102, Tower 22 1998 sq. ft. [As per page no. 46 of reply] 2213 sq. ft. - as per offer of possession (increase is 10.5%)	28.01.2013	28.01.2017	Rs. 1,04,89,500/- [as per page no. 47 of reply]	Rs. 1,22,78,824/- [as per page 26 of complaint]  Offer of possession:- 13.10.2023
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**Relief Sought by the complainants:-**

1. Direct the respondent to pay delayed possession charges on paid amount till actual possession.
2. Direct the respondent to quash PLC charges.
3. Direct the respondent to quash the cost of increase in super area without increasing carpet area.
4. Direct the respondent to quash club membership charges as club has not been constructed.
5. Direct the respondent to quash holding charges.

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/7694/2022 Rupak Kumar Lohit and Bipasha Bhatia Lohit VS. BPTP Limited & Country Wide Promoters Private Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 37-D, Gurugram
2.	Nature of project	Group Housing Towers

3.	<b>RERA registered/not registered</b>	Registered 299 of 2017 dated 13.10.2017
4.	<b>DTPC License no.</b>	83 of 2008 dated 05.04.2008
	<b>Validity status</b>	04.04.2025
	<b>Name of licensee</b>	SUPER BELTS PVT. LTD and 3 others
	<b>Licensed area</b>	23.18 acres
7.	<b>Unit no.</b>	T-22-2002, Tower 22 [As per page no. 46 of reply]
8.	<b>Unit measuring</b>	1998 sq. ft. [As per page no. 46 of reply] 2213 sq. ft. ~ as per offer of possession (increase is 10.5%)
9.	<b>Date of execution of Flat buyer's agreement</b>	17.12.2012 (As per page no. 41 of reply)
10.	<b>Date of building plan</b>	21.09.2012 [As stated by the respondent in his reply]
11.	<b>Possession clause</b>	<b>5. Possession</b>  <b>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of</b>



		<p>180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p><b>1.6 "Commitment Period"</b> shall mean, subject to, Force Ma jeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</p>
12.	Due date of possession	<p>17.12.2016</p> <p>(calculated from the date of execution of buyer's agreement i.e., 17.12.2012 being later as the building plan was sanctioned on 21.09.2012)</p>
	Grace period	<p>In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. Therefore, the grace period is allowed, and the due date of possession comes out to be 17.12.2016.</p>
13.	Basic Sale Price	<p>Rs. 1,04,89,500/-</p> <p>[as per page no. 47 of reply]</p>



		Rs. 1,33,16,500/- as per SOA dated 11.07.2022 on page 76 of the complaint
14.	Total amount paid by the complainant	Rs. 1,30,69,437/- (as per SOA dated 11.07.2022 on page 76 of complaint)
16.	Occupation certificate dated	Not received <i>only in - principle approval obtained on 21.09.2023</i>
17.	Letter of offer of possession dated	13.10.2023 (as per page no. 81 of reply)

**B. Facts of the complaint:**

5. The complainants have made the following submissions in the complaint:

- I. That the complainant is a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the Respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainant being interested in the project because it was a housing project and the complainant had the need to own an own Home for their family.
- II. That one-sided development agreement and inordinate delay in possession has been one of the core concerns of home buyers. That the previous allottees approached to the respondent for booking of a flat admeasuring 1998 Sq ft in BPTP Terra Sector- 37 D, Gurugram and paid booking amount Rs. 7,00,000/- through receipt Nos. 2012/1400023966 and 2012/1400023967 on dated 27.08.2012.
- III. That the complainant was allotted the flat no. T22-2002, 20<sup>th</sup>





Floor, Tower 22, admeasuring 1998 Sq ft in Project "BPTP Terra" Sector- 37 D, Gurugram. That the respondent to dupe the complainant in their nefarious net even executed Buyer's Agreement Signed Between Complainants and M/S BPTP Limited & Countrywide Promoters Pvt. Ltd on dated 17.12.2012, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.

- IV. That the total cost of the said flat is Rs. 1,33,11,226/- including Basic, Development charges, Club, Firefighting & power Backup installation charge, 20<sup>th</sup> Floor PLC, IFMS, Car Parking, VAT as per SOA dated 11.07.2022 and also as per Builder Buyer Agreement and out of that sum of Rs. 13,069,437.35/- Paid by the complainants (more than 90% of Total Sale Consideration) in time bound manner.
- V. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 13,069,437.35/- to the respondent till date and only last instalment is remained as per the Payment Schedule (more than 90% of Total Sale Consideration paid by complainant) and paid amount was demanded by the respondent without doing appropriate work on the said project even after extracting more than 90% amount which is illegal and arbitrary.
- VI. That respondent was liable to hand over the possession of a said unit before 14.12.2016 (Including Grace Period) so far

from completion as per Flat Buyer's agreement clause no 5.1. That respondent was liable and had committed to hand over the possession of a said unit before 14.06.2016 so far from completion as per Buyer's agreement clause no 5.1 read with Clause 1.6 of BBA but the builder has still not offered the possession of the said Unit and has neither obtained the required OC till date. As per construction status and absence of basic amenities respondents will take more time to give physical possession.

- VII. That the builder in last 10 years, several times made false promises for possession of flat and current status of project still desolated and raw not even 60 % work is completed builder breach the trust and agreement. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) Complainant has fulfilled her responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the Complainant herein are not in breach of any of its terms of the Agreement.
- VIII. That Complainant has paid all the instalments timely and deposited Rs. 13,069,437.35/-. That respondents in an endeavor to extract money from Allottees devised a payment plan under which respondent linked more than 20 % amount of total paid against as a an advance 75% amount linked with the construction of super structure only) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of



facilities amenities and after taking the same respondent have not bothered to any development rest 5 % lined with offer of possession.

- IX. That respondent executed FBA is one sided at the time of offer of possession builder used new trick for extracting extra money from Complainant and forcibly imposed escalation cost, increase in super area, increase in STP, Electrification Charges and other similar charges, extra VAT Charges (opt Amnesty scheme or composition scheme, Extra GST charges etc.
- X. The Respondent will increasing super area of the unit without increasing carpet area of the project and they revised building plan without consent from buyers as per DTCP and HARERA Norms builder should require 2/3 buyers' prior consent.
- XI. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and her family has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant are eminently justified in seeking possession of flat along with delayed penalty.
- XII. That the respondent had illegal and unjustified demand towards VAT intimidation attempt to coerce and obtain an illegal and unfounded claim amount. Respondent have cited case laws, namely the Raheja Development Corporation Case

(2005) and the L&T Limited case (2013), which are broad and general rulings on taxation and works contract, but fail to apply to your frivolous, false, misleading claim. That these cases have laid down a general principle of law in respect of works contract taxes and has absolutely no bearing in the present matter. We maintain that the scheme has come in operation through notification of the State of Haryana, and is independent of the cited case laws, and is merely to rationalize the taxation on developers as the appropriate assesses. Respondent applied reasoning in the Note on value added liability is misleading and misconstrued. That the liability of the VAT is on builder and it is a given under the law.

- XIII. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority.

**C. The complainants are seeking the following relief:**

6. The complainants have sought following relief(s):
- I. Direct the respondent to give the physical possession along with interest on prescribed rate of interest.
  - II. Direct the respondent quash the cost of increase in super area without increasing carpet area of the unit.
  - III. Direct the respondent quash Club Membership Charges Rs. 2,00,000/-.
  - IV. Direct the respondent to remove the cost of electrification charges and PLC charges.
  - V. Direct the respondent not to charge holding charges.

**D. Reply filed by the respondents.**



7. The respondents have contested the complaint on the following grounds:

- I. That the complainants booked a unit vide an application form dated 27.08.2012 by paying a booking amount of Rs. 7,00,000/- vide cheque no. 318118 and 208198. Pursuant to booking in the said Project, a letter dated 19.10.2012 was sent to the Complainants in order to invite the Complainants for the selection of the unit for allotment.
- II. That subsequent to such invitation, a unit bearing number T-22 - 2002, 20<sup>th</sup> Floor, Tower T22, tentatively admeasuring 1998 sq. ft. was selected as per the terms and conditions of the Application Form and a letter dated 27.10.2012 was thereby issued in favour of the Complainant confirming the selection of the above- noted unit and consequently, the Allotment of the same took place vide Allotment Letter dated 07.12.2012. It is submitted that prior to approaching the Respondent No. 1, the Complainants had conducted extensive and independent enquiries regarding the project and it was only after the Complainants were fully satisfied with regards to all aspects of the project, that the Complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the Respondents.
- III. That the complainants consciously and wilfully opted for subvention-scheme plan as per their choice for remittance of the sale consideration for the unit in question and thereby a tripartite agreement dated 21.11.2012 and further represented to the respondent no. 1 that they shall remit every



instalment on time as per the payment schedule. That the respondent no. 1 had no reason to suspect *bonafide* of the complainants. It is pertinent to mention here that the Respondent has always been responsible for their liability and hence paid all the Pre-EMI as per the agreed terms and conditions of the Agreement. The *bonafide* of the Respondents shall be noted that as per the Agreement, the Respondent were only liable to pay the Pre-EMI amount till 30.06.2015.

- IV. That consequently, a flat buyer's agreement dated 17.12.2012 was executed between the complainants and respondents. It is pertinent to mention that the flat buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- V. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect.
- VI. That the due date is calculated from the execution of Flat Buyer's Agreement (17.12.2012) being later as the Buildings Plan of the project was sanctioned on 21.09.2012. Thus, the proposed due date for offer of possession comes out to be 17.12.2016 (including the grace period).
- VII. That it is most humbly submitted that the construction of the Unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the



control of the company, the benefit of which is bound to be given to the Respondent no.1 in accordance with clause 10 r/w 1.17 of the Agreement.

- VIII. At this stage, it is categorical to note that Respondent No.1 was faced with certain *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent No.1 to

develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the Respondent No.1 completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainants and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- IX. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the Project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic



including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless execution of the Project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- X. Furthermore, it needs to be seen that the development of the Unit and the Project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the Complainants, which, the Complainants failed to do. The demands were raised as per the agreed payment plan however, despite the same, the Complainants have delayed the payment against the Unit. That the total sales consideration of the unit was Rs. 1,68,98,075.33/- out of which the Complainant had/have only made payment of Rs. 1,30,69,437.35/-
- XI. That it was the obligation of the Complainants to make the

payments as per the adopted payment plan and agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the Agreement executed between the parties as per clause 7 of the Agreement. That in case of default by the Complainants, the Complainants bound to make the payment of interest. That this obligation has also been noted in the RERA, 2016.

- XII. It is submitted that the demand letters were raised as per the agreed payment plan however, the Complainants had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the Complainants from time to time. That the Project and attained the in-principal Occupation Certificate from the concerned Authority vide MEMO No. ZP-437-IV/PA(DK)/2023/31681 dated 21.09.2023 and hence offered the possession of the unit to the Complainants vide Notice for Offer of Possession dated 13.10.2023.
- XIII. At this stage, it is pertinent to mention here that all the claims put forth by the Complainants in the present complaint are wrong and frivolous and hence the present complaint is liable to be dismissed. That the Complainants, in the present case, has relied on the Offer of Possession of an allottee of another tower in same Project. It is pertinent to mention here that no demand as alleged in the Offer of Possession of another allottee has been raised by the Respondent, till date. That in any case whatsoever, no reliance can be placed on such offer of another allottee or demands raised from any other allottee.



- XIV. It is imperative to mention here that as per Clause 4.1 of the BBA, the Complainants acknowledged the fact that the building plans of the Project are subject to change till the stage of grant of Occupation Certificate and hence are indicative in nature and may undergo change during the course of construction as required by the statutory authority.
- XV. Moreover, the Complainants also agreed to the fact that in case the Super Built up area of the unit exceeds +/- 15% of the original booked area, the same shall be intimated to the Complainants in writing. The relevant Clause 4.1 and 4.1(c) is reiterated hereunder.
8. Copies of all the relevant documents have been filed and placed on the 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**
9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:
- E.1 Territorial jurisdiction**
10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

11. Section 11(4)(a) of the Act 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) The promoter shall-

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

**Section 34-Functions of the Authority:**

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

12. So, in view of the provisions of the Act of 2016 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 delay in completion of construction of project due to force majeure conditions.**

13. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control



Board, Hon'ble Supreme Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.

14. In the present matter, the builder buyer's agreement was executed between the parties on 17.12.2012. Therefore, the due date of handing over of possession is taken from the clause 5.1 read with 1.6 of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 17.12.2016. The events such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi among others were for a shorter duration of time and were not continuous as there is a delay of around five years and even happening after due date of handing over of possession. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondents cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.
15. 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."*

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 17.12.2016 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 orders of court and 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. Observations of the authority**

17. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges are involved in all these cases and others pending against the respondents in this project as well as in other projects developed by them. So, vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee and a report was



submitted and the same along with annexures was uploaded on the website of the authority.

**H. Findings on the relief sought by the complainants.**

- G.I. Direct the respondents to deliver the physical possession of the unit along with delay possession charges.
- G.II. Direct the respondent quash the cost of increase in super area without increasing carpet area of the unit.
- G.III. Direct the respondent quash Club Membership Charges Rs. 2,00,000/-.
- G.IV. Direct the respondent to remove the cost of electrification charges and PLC charges.
- G.V. Direct the respondent not to charge holding charges.

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

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

19. Clause 5 and 1.6 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

***Clause 5 POSSESSION AND HOLDING CHARGES***

*5.1 The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.*

***Clause 1 DEFINITIONS:***

***1.6 "Commitment Period"*** shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations,

*A*

*formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.*

20. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later and further provided in agreement that promoter shall be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period for making offer of possession of the said unit. The period of 42 months expired on 17.12.2016 (calculated from the date of execution of buyer's agreement i.e., 17.12.2012 being later as the building plan was sanctioned on 21.09.2012). Since in the present matter, the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:



**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

22. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. **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., 25.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(z) 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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoter which is the same as is being granted to the complainant in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. By virtue of clause 5 read with clause 1.6 of the buyer's agreement executed between the parties on 17.12.2012, the possession of the subject flat was to be delivered within a period of 42 months from the date of sanction of building plans or date of execution of buyer's agreement, whichever is later. For the reason above, the due date of possession is to be calculated from the date of execution of buyer's agreement 17.12.2012 being later and as far as grace period of 180 days is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 17.12.2016. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be



treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 17.12.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

#### **G.II Increased Super Area**

28. It is contended that the respondents have increased the super area of the subject unit without giving any formal intimation, by taking any written consent from the allottees. On perusal of record, the super area of the unit was 1998 sq. ft. as per the flat buyer's agreement and it was increased by 215 sq. ft. vide letter of offer of possession, resulting in total super area of 2213 sq. ft. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the super area of the unit would be revised and increased by the respondent, and they shall pass on this benefit to the complainant/allottees as per the recommendations of the committee.

#### **G.III Club Membership Charges**

29. The term club membership charges have been defined under clause 1.4 and clause 3.2(a) prescribes the amount of club membership charges to be levied, which are reproduced below:

*1.4 "Club Membership Charges" or "CMC" shall mean charges to be paid by the purchaser(s) to the seller or the maintenance*

*service provider for membership of the club to be developed by the seller/confirming party. However, aforesaid charges do not include the usage charges for the club facilities, which shall always be payable extra by the purchaser(s).*

**3.2 in addition to the aforesaid cost of property, the purchaser(s) has undertaken and agreed to pay the following charges: -**

**a) club membership charges ("CMC") @ Rs. 2,00,000/- per unit.**

30. The said 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 as under:

*"...After deliberation, it was agreed upon that club membership will be optional.*

*Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.*

*In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso."*

31. It was also observed, while giving recommendations that in the cases of nominees of projects 'Spacio' and 'Park Generation' on issues concerning super area, car parking charges, development charges, cost escalation, advance maintenance, GST & VAT etc. may be implemented in case of the allottee/complainant of 'Terra' project also and the respondent may be directed to comply with the same while offering possession.
32. The authority concurs with the recommendations made by the committee and holds that the club membership charges (CMC) shall be



optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

#### **G.IV Preferential Location Charges:**

33. Both the respondent and the complainants are bound by the terms and conditions of the FBA. The term PLC has been defined under clause 1.31 and clause 3.1© prescribes the amount of PLC to be levied, which are reproduced below:

*1.31 "Preferential Location Charges" or PLC" shall mean the charges payable by the purchaser(s), calculated on super built up area, in case the unit allotted to the purchaser(s) has a locational advantage. There can be more than one PLC charges applicable to a unit"*

*"clause 3.1© of FBA- Preferential Location Charge (PLC) all units will attract one or more PLC, as applicable, due to their locational advantage, as per the table below. However, the total PLC for a unit shall not exceed 12% of BSP.*

#### **Preferential Location Charges on BSP**

Corner - 7%

Corner+Club or park facing - 10%

Park Facing - 7%

Ground Floor- 5%

First floor- 4%

Second/Third Floor- 3%

34. 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 the PLCs have been levied strictly in accordance with the provisions of the clauses referred to

above. In view of this, the committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with the complainant in the project "Terra".

#### **G.V Electrification Charges**

35. In the present complaint, it was contended by the complainant that the respondent has been charging various unjust and unreasonable demands under various heads i.e. electrification charges. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of FBA.
36. The authority concurs with the recommendations 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 allottee of Terra @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottee of Terra and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottee of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

#### **H. Directions of the authority**

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

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- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 17.12.2016 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The said amount shall be payable after adjusting the Pre-EMI amounts already paid by the respondent to the complainant.
- ii. The arrears of such interest accrued from 17.12.2016 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.
- iii. The respondent/promoter shall handover the physical possession of the allotted unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.

- vi. That the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. **3864-3889/202**, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.
38. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.
39. Complaint as well as applications, if any stands disposed of accordingly.
40. File be consigned to registry.

**Dated: 25.04.2025**

  
**(V.K. Goyal)**  
**Member**

**Haryana Real Estate Regulatory  
Authority, Gurugram**

**HARERA**  
GURUGRAM