



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	604 of 2024
Date of filing.:	19.04.2024
First date of hearing.:	28.05.2024
Date of decision.:	09.09.2025

Ashwini Chaudhary
H. No. 1083, Sector 28,
Faridabad, Haryana 121003.

....COMPLAINANT

VERSUS

BPTP Limited
BPTP Capital City, 6th Floor,
Plot No. 2B, Sector 94, Noida,
Uttar Pradesh - 201301.

....RESPONDENT

Present: - Mr. Vineet Yadav, Counsel for the complainant
through VC

Mr. Tejeshwar Singh, Counsel for the respondent through
VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of

2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Sector 75, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	Earlier allotted Unit no. H2 - 11, Second Floor. Later shifted to PE - 189-SF, measuring 1510 sq. ft
5.	Date of booking	24.12.2009
6.	Date of Allotment (in respect of unit PE - 189-SF)	12.06.2012
7.	Date of floor buyer agreement (in respect of unit PE - 189-SF)	16.10.2012
8.	Possession clause in floor buyer agreement (clause 5.1)	Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/



		<p>confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller/Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan, whichever is later. 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 thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).</p>
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9.	Due date of possession	16.10.2014
10.	Total sale consideration	₹ 26,64,081.72/-
11.	Amount paid by complainant	₹ 27,19,209.93/-
12.	Offer of possession.	18.10.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the Late Smt. Savitri Chaudhary (mother of the complainant) and Ashwini Chaudhary (complainant) had booked the a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75, Faridabad, Haryana on 24.12.2009 and the respondent allotted in their name unit bearing No. H2- 11, Second Floor in the said project vide allotment letter dated 24.12.2009.
4. However, after a gap of three years, respondent changed the unit of the complainant from unit no. H2-11-SF and allotted a different unit bearing no. PE-189-SF, measuring 1510 sq.ft vide re-allotment letter dated 12.06.2012, a copy of which is annexed as Annexure C-2.
5. A floor buyer agreement was executed between both the parties on 16.10.2012 in respect of the re-allotted unit bearing no. PE-189-SF. The total sale price of the unit was fixed at ₹ 26,64,081.72/- against which the complainant has paid a total amount of ₹ 27,19,209.93/- till date. The



complainant have already made the complete payment to the respondent.

The copies of the receipts are attached herewith as Annexure C-4 (Colly).

6. As per clause 5.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Said period expired on 16.10.2014. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent authority.
7. It is submitted that Mrs. Savitri Chaudhary (mother of the complainant) expired on 11.08.2019. A copy of the death certificate is attached herewith as Annexure C-5. Upon her demise, the complainant contacted the respondent to transfer the said floor in the name of the complainant and respondent sought a registered relinquishment deed. The complainant approached the concerned Registrar/Tehsildar for registration of relinquishment deed but the concerned Authority refused the same with a reason that the property ID is mandatory which should be generated by the respondent but the respondent refused to generate the property ID and transferred the unit in the name of complainant before registration. It is pertinent to mention here that a notarized copy itself sufficient document to transfer the half of the share in favour of the complainant.
8. The respondent offered the possession of the unit on 18.10.2023 after a delay of eight years. Further, vide said offer of possession the respondent had



issued a demand letter for an amount of ₹11,56,332.05/-, to be paid within one month i.e by 17.11.2023. The respondent had asked the complainant to deposit cost of escalation charges which is ₹. 1,60,180/-, these charges were not payable by the complainant as the delay in possession was caused and attributed by the respondent only. It is also submitted that even after such a huge delay, the respondent failed to adjust any delay possession interest as the respondent offered the possession of the said flat after a delay of 8 years. The respondent further forced the complainant to sign an Indemnity cum Undertaking, supplied along with offer of possession, which says that the complainant shall not raise any claim or dispute whatsoever, monetary or otherwise, against the various charges deposited with the companies before or at the time of taking over the physical vacant possession of the said unit.

9. Pursuant to the letter of offer of possession, the complainant had sent a legal notice dated 01.01.2024 to the respondent seeking delayed possession interest which was duly received and replied by the respondent vide reply dated 14.02.2024 whereby the respondent admitted that there is delay but that due to force majeure conditions. A copy of the legal notice dated 01.01.2024 and reply dated 14.02.2024 is attached herewith as Annexure C-7 (Colly).
10. That the respondent vide letter dated 02.04.2024 terminated and cancelled the Unit No. PE - 189, Second Floor in Park Elite Floor arbitrarily, illegally and unilaterally without following the natural justice as the complainant demanded the delayed possession interest and refused to sign the illegal and



unjustified indemnitycum-undertaking. A copy of the letter dated 02.04.2024 is attached herewith as Annexure C-8

11. The complainant had again submitted a photocopy of the relinquishment deed dated 06.04.2024 in the office of the respondent to transfer the unit in his name but all in vain. A copy of the relinquishment deed dated 06.04.2024 is attached herewith as Annexure C-9.

12. That the complainant was always willing and ready to deposit the due amount as per offer of possession dated 18.10.2023 but when the complainant objected to the illegal charges, the respondent cancelled/terminated the said flat on 02.04.2024. The complainant was ready to deposit the amount but not the illegal demand raised by the respondent. The complainant further requested the respondent to pay the delayed possession interest as the possession was offered after a delay of 8 years but the same were rejected by the respondent. The complainant is willing and ready to deposit the due amount as per offer of possession dated 18.10.2023 after adjusting the delayed possession interest as per RERA Act and termination letter may be revoked in such circumstances.

13. Hence, the complainant has filed the present complaint seeking possession of the floor bearing no. PE-189-SF along with interest for the delay caused in delivery of possession in terms of RERA Act, 2016 and Rules made thereunder.



C. RELIEF SOUGHT

14. In view of the facts mentioned above, the complainant prays for the following reliefs):-

- i. Issue an order/direction to set-aside the termination letter dated 02.04.2024 which was issued illegally, arbitrarily, unilaterally and without following the natural justice under Section 11 (5) of the RERA Act.
- ii. Issue an order/direction to the respondent to handover the physical possession with the amenities as promised along with completion certificate and required approval from the competent authority, of the Flat No. PE - 189, Second Floor, Park Elite Floor, Sector - 75, Faridabad and execute the conveyance deed of the above mentioned unit in favour of the Complainant under Section 17(1) and 18 (1) of the Real Estate (Regulation and Development) Act, 2016.
- iii. Issue the order/direction to the respondent to pay the delayed possession interest rate as prescribed under the interest prescribed from 16.10.2014 till the actual possession is handed over to the complainant, under Section 15 Haryana Real Estate (Regulation and Development) Rules 2017. 4.



- iv. Issue an order/direction to the respondent to withdraw illegal demand of Rs. 1,60,180/- on account of escalation charges, being charged illegally due to delay on the part of the respondent.
- v. Issue an Order/Direction to the respondent to transfer the half of the share of the unit in the name of complainant in view of the relinquishment deed.
- vi. Issuance of any other direction, order of directions which this Hon'ble Authority may deem fit and proper in the peculiar facts and circumstances of the case.

15. During the hearing, learned counsel for the complainant reiterated the submissions made in the complaint which are not being reproduced for brevity. He further submitted that a relinquishment deed of all the remaining legal heirs of Mrs Savitri Chaudhary has already been placed on record at page 94 of the complaint. Vide order dated 18.03.2025, Authority has already observed that said relinquishment deed is enough to establish sole interest of present complainant over the unit in question.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 14.10.2024 pleading therein:

16. That at the very outset it is submitted that the unit was booked by the complainant along with Late Mrs. Savitri Chaudhary however, the complaint


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has been filed by only one allottee without impleading the legal heirs of Late Mrs Savitri Chaudhary hence, the complaint is liable to be dismissed on the ground of non-joinder of parties.

17. The complainant along with Late Mrs. Savitri Chaudhary had approached the respondent and expressed interest to purchase a unit in the project being developed by the respondent under the name and style of "Park Elite Floor", Parklands, Faridabad. Accordingly, an application/ booking form was executed by them.
18. That consequently, a residential independent floor bearing no. H2-11-SF, was allotted on the basis of the tentative layout plan vide allotment letter dated 24.12.2009. That later their unit was shifted from unit H2-11-SF to PE-189-SF tentatively admeasuring 1510 sq. ft with their consent. The copies of allotment letter dated 24.12.2009 and re-allotment letter dated 12.06.2012 are annexed as Annexure R2 and R3.
19. That thereafter, a floor buyer's agreement was executed between the parties on 16.10.2012. A copy of the floor buyer's agreement dated 16.10.2012 is annexed and marked as Annexure R4.
20. Further, as per clause 5.1 of the floor buyer's agreement, possession of the unit was proposed to be handed over within a period of 24 months from the date of execution of the said agreement or sanction of building plan whichever is later, along with a grace period of 180 days. At this stage, it is submitted that the grace period has also been considered by Ld. Tribunal,

Chandigarh in the case titled as **Emaar MGF Land Ltd. Vs Laddi Paramajit Singh Appeal No. 122 of 2022.**

21. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. Reference in this regard may be taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said project became scarce. The respondent was faced with certain other 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 02.11.2015, 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.

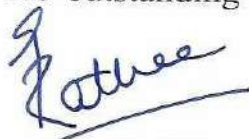


Additionally , the construction of the project was marred by the Covid-19 pandemic, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, a series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. Further, during the period from 12.04.2021 to 24.07.2021, each and every activity including construction activity was banned in the State.

22. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan. Copies of the demand letters, payment receipts, reminders and final opportunity letters are annexed as Annexure R5(colly).

23. Regardless, the respondents made sincere efforts to complete the construction of the project and had offered possession of the unit duly on 18.10.2023 to the complainant. A copy of offer of possession is annexed as 18.10.2023 is annexed as Annexed R6. However, the complainant failed to come forward and take possession.

24. That since the complainant did not pay heed to the reminder letters issued by the respondent, the respondent was constrained to issue the final demand notice for the payment of the outstanding amount dated 29.02.2024 failing

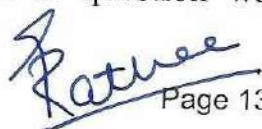


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which the respondent will have no option but to terminate the unit of the complainants. However, despite the final opportunity, the complainant failed to make any payment towards the said unit which led to the issuance of the termination letter dated 02.04.2024. The respondent had the right to terminate the floor as per the agreed terms and conditions under the agreement. A copy of the termination letter dated 02.04.2024 is annexed as Annexure R7.

25. During the course of hearing, learned counsel for respondent submitted that the respondent had issued reminders dated 20.11.2023, 26.12.2023 and 25.01.2024 to the complainant for making payment of outstanding amount but the complainant failed to respond to the same. The respondent then issued a final demand notice dated 29.02.2024 to the complainant which was again ignored by the complainant for reasons best known to him. Owing to the continuous defaults of the complainant, the unit of the complainant was terminated on 02.04.2024, after which the complainant has ceased to be an allottee. The complainant wilfully and voluntarily chose not to make further payments and hence the unit of the complainant was rightly terminated. He argued that vide said offer of possession respondent has not adjusted any delayed possession interest to the complainant and has hence not charged any delayed payment interest from the complainant. The zero figure is no proof that the complainant has not defaulted in making payments.

26. Learned counsel for the respondent further submitted that in the captioned complaint the unit in question was allotted to two allottees namely Mr.



Ashwini Chaudhary and Mrs. Savitri Chaudhary. Though Mrs Savitri Chaudhary is now deceased, and that a relinquishment deed of all the remaining heirs of Mrs. Savitri Chaudhary has been placed on record in the complaint file, however, the complainant i.e Mr. Ashwini Chaudhary has failed to complete the formalities with regard to change of allottees with the respondent company. Therefore, the complainant may be directed to complete all formalities with regard to the same.

E. ISSUES FOR ADJUDICATION

27. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

28. As per facts, complainant along with his now deceased mother, Late Mrs Savitri Chaudhary, had approached the respondent to book a unit in the project namely 'Park Elite Floors' Parklands situated at Faridabad. They were initially allotted unit bearing no. H2-11-SF, however, the allotment was later shifted from unit bearing no. H2-11-SF to a different unit bearing no. PE-189-SF, measuring 1510 sq.ft vide re-allotment letter dated 12.06.2012. Thereafter, both parties executed a floor buyer agreement in respect of the floor bearing no. PE-189-SF on 16.10.2012 for a total sale consideration of ₹26,64,081.72/- against which the complainant has paid a total amount of ₹ 27,19,209.93/-. It is the submission of the complainants that the

respondents have delayed delivery of possession of the booked floor beyond stipulated time. The respondent had issued an offer of possession to the complainant on 18.10.2023, however, along with said offer of possession the respondent had raised a further demand of ₹ 11,56,332.05/- from the complainant despite having received almost the entire sale consideration amount. The complainant, vide letter dated 01.01.2024, raised objection to making payment of this demand as it was arbitrary and illegal. The respondent instead of resolving the grievance of the complainant, rather cancelled the allotment of the complainant vide letter dated 02.04.2024 on account of non payment of dues. Constrained, the complainant has filed the present complaint seeking possession of the booked unit along with delay interest.

It is noteworthy to observe that the co-allottee i.e Mrs. Savitri Chaudhary (mother of the complainant) had expired on 11.08.2019. A relinquishment deed dated 06.04.2024 from all the legal heirs of Late Mrs. Savitri Chaudhary in favour of the complainant qua the unit in question has been placed on record. Vide order dated 18.03.2025, Authority has already observed that said relinquishment deed is enough to establish sole interest of present complainant over the unit in question.



29. As per clause 5.1 of the buyer's agreement dated 16.10.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. Thus, the contention of the respondents to calculate the deemed date of possession from the date of sanction of building plans is rejected. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. In this regard, it is observed that respondents have not placed on record any document to show that an application had been filed with the competent authority for grant of occupation certificate within the grace period i.e from 17.10.2014 till 16.04.2015. Thus, the delay is entirely on the part of the respondents. As per the settled principle no one can be allowed to take



advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 16.10.2014.

The respondents have averred that the delay in delivery of possession has been due to force majeure conditions. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondent has attributed this delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondent has failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondent has failed to adequately prove the extent to which the construction of the project in question got affected. Furthermore, respondent has submitted that the construction of the project got severely affected due to COVID-19 outbreak. It is observed that the Covid-19 pandemic hit construction activities post 22.03.2020 i.e after the proposed deemed date of possession, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a

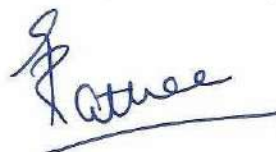


force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr.** bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself”

30. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainants by 16.10.2014. However, respondent failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainants on 18.10.2023. Said offer of possession was not acceptable to the complainant since along with said offer of possession respondent had raised a further demand of ₹ 11,56,332.05/- . This demand had been resisted by the complainant on grounds of being arbitrary and illegal. It is the



contention of the complainant that despite having paid more than the basic sale consideration, respondent had raised illegal demands on account of cost escalation charges, however, the said charges are not payable by the complainant as the delay caused in delivery of possession has been entirely the fault of the respondent. Also at the time of issuing offer of possession respondent had failed to adjust the component of delay interest admissible to the complainant on account of delay caused in delivery of possession. Complainant had conveyed his grievances to the respondent vide legal notice dated 01.01.2024 but received no positive response. On the other hand, respondent has submitted that the demands raised vide offer of possession were in consonance with the terms of agreement executed between the parties and hence payable by the complainant.

31. Authority has carefully heard the rival contention of the both parties and it is observed that with regard to the issue of taking over of possession, it is the contention of the respondent that the offer of possession dated 18.10.2023 was issued to the complainant after completion of all development works. There was no fault with respect to the said offer and the complainant should have accepted the same. Rather the complainant failed to take possession and further refused to make payment of balance amounts. Thus, constraining the respondent to cancel the allotment of the complainant vide cancellation letter dated 02.04.2024. Further, the respondent had also obtained an occupation certificate for the unit of the complainant on 30.04.2024. Admittedly, the

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complainant has already made payment to the tune of ₹ 27,30,962.05/- which is more than the basic sale consideration in respect of the booked unit to the respondents by the year 2016 itself. Complainant has shown his bonafide in respect of the booking of the unit in question having made payment of almost entire sale consideration and patiently waiting for delivery of possession. On the other hand, respondent has delayed delivery of possession of the floor by more than 8 years which is a prolonged delay. By way of the alleged offer of possession dated 18.10.2023, respondent had raised a further demand of ₹11,56,332.05/- which is a huge amount for someone who has already paid almost the entire amount. Further the respondents had failed to adjust the component of delay interest admissible to the complainants for the inordinate delay caused in delivery of possession. Respondent could not have expected the complainant to pay the said amount without demanding the adjustment of delayed possession interest. When the complainants had raised their genuine concerns whereas the respondent failed to resolve his queries and offer an affordable solution. Rather the respondents forced the complainants into making payment of the demand of ₹ 11,56,332.05/- without fulfilling its obligation towards delayed possession interest.

32. It is further observed that the respondent had issued the alleged offer of possession to the complainant without obtaining an occupation certificate.



Throughout the period from 19.10.2023 till before the date of receipt of occupation certificate, respondent had issued reminder notices dated 20.11.2023, 26.12.2023, 25.01.2024 and 29.02.2024 to the complainant for making payment of balance sale consideration and taking over of possession. No communication was made by the respondent with regard to status of occupation certificate in the offer of possession as well as the reminder letters. Although the respondent had continuously communicated to the complainant that the unit was ready for possession, however, in the absence of receipt of occupation certificate the complainant could not have positively ascertained that the unit was in a habitable condition. Thereafter the respondent received occupation certificate on 30.04.2024, however, respondent failed to communicate to the complainant that received occupation has been granted in respect of the unit in question. Strangely, after 30.04.2024, respondent did not issue any intimation/ demand letter to the complainant apprising him of the fact that the occupation certificate has now been received. Complainant could not have offhandedly known that the unit in question is now granted occupation certificate. It was an obligation cast upon the respondent to apprise the complainant as soon as the occupation certificate was granted by the competent authority. Since the offer of possession dated 18.10.2023 was issued without obtaining occupation certificate thus the said offer was not a valid offer of possession. Complainant could not have been forced to accept the same. Instead of communicating the



grant of occupation certificate, respondent had rather cancelled the allotment of the complainant vide letter dated 02.04.2024 on account of non payment of dues, when in fact a valid offer of possession was not issued to the complainant and hence, the demand raised by the respondent was invalid. Further at the time of said cancellation respondent was duty bound to refund the amount paid by the complainant after forfeiture of earnest money, however, the respondent illegally retained the entire amount paid by the complainant, thus enjoying wrongful gains and causing wrongful loss to the complainant. Therefore, in light of these facts, it is germane to say that the cancellation of the allotment of unit vide letter dated 29.02.2024 is unlawful and bad in the eyes of law. Respondent could not have cancelled the unit of the complainant and parallelly retained the amount paid in lieu of said unit. Furthermore, since the offer of possession itself was incomplete and before time, the demands raised by the respondent were premature and hence non-payable by the complainant. Thus, the allegation of the respondent that the complainant had defaulted in making payment of instalments is found to be devoid of merit.

33. The complainant has further contended that along with the offer of possession, the respondent had raised illegal demand on account of cost escalation charges and also failed to adjust the delayed possession interest. With regard to the imposition of cost escalation charges of ₹ 1,60,180/-, it is observed that the possession of the unit was to be delivered by the respondent



by 16.10.2014. Whereas the respondent had issued an offer of possession to the complainant on 18.10.2023 after a gap of nearly 8 and a half years. Cost escalation charges, though a mentioned clause in the floor buyer agreement, are unjust at this stage since there has been a huge delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs during the stipulated period of construction of project, but in this case, the deemed date of delivery of possession had long passed and the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a 8-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondents. Therefore, demand raised by the respondent on account of cost escalation charges shall be set aside.

34. Further with regard to payment of delayed possession interest, it is observed that as per the builder buyer agreement possession of the unit should have been delivered to the complainant on 16.10.2014. However, respondent failed to deliver possession of the unit within stipulated time. An offer of possession was issued to the complainant on 18.10.2023, however the said offer of possession was without an occupation certificate. Complainant could not have accepted the said offer of possession. Thereafter, the respondent received an occupation certificate on 30.04.2024, but the same was not



conveyed to the complainant. From the receipt of occupation certificate till date, respondent has not issued a fresh offer of possession to the complainant conveying the same.

Admittedly there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked unit, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant. So, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 16.10.2014 till a valid offer of possession is issued to the complainant. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter; in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;



(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:

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

35. Hence, Authority directs respondents to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from from the due date of possession till the date of a valid offer of possession.



36. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of offer of possession as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 09.09.2025 (in ₹)
1.	2691548.93	16.10.2014	3185961
2.	27661	30.11.2016	26361
Total:	27,19,209.93/-		32,12,322/-
Monthly Interest:	27,19,209.93/-		24,249/-

37. It is pertinent to mention that in the captioned complaints, complainants have received timely payment discount from the respondents as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainants and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainants. Although it is true that this discount is an act of good will on the part of the respondents but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment

policy. Therefore, the complainants cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondents.

38. Further, with regard to the issue of execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favor of an allottee once an allottee has paid the total sale consideration in respect of the booked unit and is ready/willing to take possession of the same. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. Thus, the respondent-promoter is obligated/duty bound under Section 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant-allottee after handing over of possession.

F. DIRECTIONS OF THE AUTHORITY

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

- i. Respondents are directed to pay upfront delay interest of ₹ 32,12,322/-/- (till date of order i.e 09.09.2025) to the complainant



towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 24,249/- till a valid offer of possession is issued to the complainant.

- ii. The respondent shall issue a valid offer of possession along with statement of account to the complainant incorporating therein the principles laid down in this order within 15 days of uploading of this order. Complainant shall make payment of balance sale consideration, if any, and accept the physical possession of the unit within next 15 days. The respondent shall not charge anything from the complainants which is not part of the agreement to sell.
- iii. Respondent is directed to get the conveyance deed registered within 15 days of the complainant's accepting the possession of the unit in question i.e PE-189-SF.

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


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DR. GEETA RATHEE SINGH
[MEMBER]