



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	377 of 2024
Date of filing.:	13.03.2024
First date of hearing.:	30.07.2024
Date of decision.:	16.09.2025

Vinita Kumari
R/o H. No. 10, Type 3rd,
Officers Colony, Sector 15 A,
Faridabad 121007.

....COMPLAINANT

VERSUS

M/s BPTP LTD.
BPTP Capital City, 6th Floor,
Plot No. 2B, Sector 94,
Noida, Uttar Pradesh - 201301.

...RESPONDENT

Present: - Mr. Narender Yadav, Counsel for Complainant
(through VC)
Mr. Tejeshwer Singh, Counsel for respondent
(through VC)

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 13.03.2024 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.	H2-07 Ground Floor (allotted vide allotment letter dated 24.12.2009) Later changed to PE195, Ground Floor, measuring 1510 sq. ft(allotted vide re-allotment letter 12.06.2012)
5.	Date of booking	03.06.2009.
6.	Date of floor buyer agreement	12.01.2013
7.	Possession clause in builder buyer agreement (Clause	Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any

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	5.1)	<p>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. 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>
8.	Due date of possession	12.01.2015.
9.	Total sale consideration	₹ 26,51,301.72/-



10.	Amount paid by complainant	₹ 28,72,754/-
11.	Offer of possession.	17.01.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75, 82 and 85 Faridabad, Haryana had been booked by original allottee, Mr. Arun Kumar Sharma, in the year 2009. Vide allotment letter dated 24.12.2009 Mr. Arun Kumar Sharma was allotted unit bearing No. PE-195, Ground Floor, measuring 1510 sq. ft in the said project.
4. A builder buyer agreement was executed between the original allottee and the respondent on 12.01.2013 for the unit bearing No. PE-195-GF . The total sale price of the unit was fixed at ₹ 26,51,301.72/- against which the complainant has paid a total amount of ₹ 28,72,754/- till date. The complainant has already made the complete payment to the respondent. The copies of the receipts are attached herewith as Annexure C-4 (Colly).
5. As per Clause 5.1 of the builder buyer agreement respondent was supposed to hand over the possession of the unit within 24 months from the date of execution of the agreement. Said period expired on 12.01.2015. Further, the respondent was allowed a period of 180 days for making an offer of

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possession of the unit. However, the respondent failed to deliver possession of the booked unit within the stipulated time.

6. Unable to further continue with the project, the original allottee had sold the booking rights qua the unit in question to the present complainant in the year 2022. The respondent transferred the unit in the name of the complainant on 25.05.2022. A copy of endorsement dated 25.05.2022 is attached herewith as Annexure C-3.
7. Thereafter, respondent had issued an offer of possession in respect of the unit in question on 17.01.2024 after a delay of nine years. However, said offer of possession was not valid as the same was issued without obtaining an occupation certificate. Further, upon visiting the site of the project, the complainant came to know that the promised facilities/amenities were not developed at the site and also the unit in question was not ready for possession and much work was still left to be done. Photographs of the unit in question are attached as Annexure C-6.
8. That the complainant has invested her hard-earned money in booking of the unit in the project in question on the basis of false promises made by the respondent. However, the respondent has failed to abide by all the obligations stated orally and under the builder buyer agreement.
9. Hence, the complainant has filed the present complaint seeking possession of the unit bearing no.PE-195-GF along with interest for the delay caused in



delivery of possession in terms of RERA Act, 2016 and Rules made thereinunder.

C. RELIEF SOUGHT

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

- i. To direct respondents to pay delayed possession charges from due date of delivery of possession till date of lawful offer of possession along with occupation certificate in respect of booked unit.
- ii. To direct respondents to handover the physical possession with the amenities as promised, of the Unit bearing no. PE-195, Ground Floor, Park Elite Floors in Parklands, Sector - 75, Faridabad and execute the conveyance deed of the above mentioned unit in favour of the complainant under Section 14(1), 17(1) and 18 (1) of the Real Estate (Regulation and Development) Act, 2016
- iii. Any other relief which this Hon'ble Authority deems fit and proper.

11. During the course of arguments, learned counsel for the complainant submitted that the complainant in this case is a subsequent allottee who stepped into the shoes of the original allottee in the year 2022, after passing of the deemed date of possession and coming of the RERA Act 2016. That the offer of possession dated 17.01.2024 issued by the respondent is not a valid offer of possession since the respondent had not received occupation



certificate. The project has received occupation certificate only on 30.04.2024. Further, the facilities as promised in the floor buyers agreement are not available at the site. Therefore, the complainant could not have accepted said offer of possession. He prayed that respondent be directed to handover physical possession of the unit in question with the amenities as promised alongwith admissible delay interest and execute the conveyance deed in favour of the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondent filed detailed reply on 02.12.2024 pleading therein:

12. The original allottee expressed his interest and willingness to purchase a unit in the project of the respondent known under the name and style of "Park Elite Floors" being developed at Sector-75, Faridabad. Unit no. H2-07 on ground floor ad-measuring 1418 sq. ft. was tentatively allotted vide allotment letter dated 24.12.2009. The copy of the allotment letter dated 24.12.2009 is marked and annexed herewith as Annexure R1.
13. Consequently, the unit of the complainant was shifted from H2-07 to an independent unit bearing no. PE 195, ground floor, admeasuring 1510 sq. ft. vide re-allotment letter dated 12.06.2012. The copy of the re-allotment letter dated 12.06.2012 is annexed herewith as Annexure R2.



14. That thereafter, the original allottee voluntarily entered into a builder buyer's agreement on 12.01.2013 with the respondent qua unit bearing No. PE 195 GF. A copy of the Floor Buyer's Agreement dated 12.01.2013 is annexed and marked as Annexure R3
15. In the year 2022, the original allottee and the complainant requested the respondent to endorse the unit in favour of the complainant and further executed an indemnity cum undertaking in this regard. That the unit was endorsed in favour the Complainant, thus, all rights and obligations between the parties come in effect from the date of nomination of the complainant. The copy of acknowledgement of request for ownership transfer from previous allottee to the complainant dated 02.05.2022 is annexed herewith as Annexure R4. The copies of the Indemnity Cum Undertaking of Transferor and Transferee are annexed herewith as Annexure R5 (Colly). The copy of Endorsement form and Nomination letter dated 25.02.2022 is annexed as Annexure R6(colly)
16. It is submitted that the complainant being a subsequent buyer, has no right to seek delay possession charges. At the time of nomination of the complainant, the project was already delayed due to reasons beyond the control of the company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainant willingly and voluntarily entered into the agreement for sale and the transfer documents thereof leading to their nomination. The complainant cannot be allowed to



reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the Unit. Hence, the complaint is liable to be dismissed with costs against the complainant. Further, since the subsequent allottee entered into an agreement for sale with the erstwhile allottees without making the respondent builder a confirming party and since the nomination was made after the offer of possession was already made to the erstwhile allottee, there is no delay that the Complainants had suffered. That reliance is placed to Supreme Court's pronouncement: **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479**, where it was noted that relief to subsequent allottee has to be fact-dependent:

*" 31..The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent
..... 3 Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. "*

17.As per agreement, the possession was proposed to be handed over within a period of 24 months from the date of execution of the agreement along with a grace period of 180 days. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh**



Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed. Further the due date was also subject to the incidence of force majeure circumstances and the timely payment by the complainant. That the construction of the unit was deeply affected by such circumstances, the benefit of which is bound to be given to the Respondents in accordance with clause 1.3, clause 6.1 and Clause 10 of the agreement.

18. 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 Respondents 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 respondents 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.

19. 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 R6(colly).

20. Despite innumerable hardships being faced by the respondents, the respondents completed the construction of the project and services and offered the possession of the unit to the complainant on 17.01.2024. The complainant was further asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondents to initiate the process of physical possession of the unit, however,



the complainant never turned up to take the possession of the unit. Subsequently, the occupancy certificate dated 30.04.2024 was also issued to the respondents. However, the complainant willingly and voluntarily did not take possession of the unit or remit the balance sales consideration. A copy of the letter of offer of possession dated 17.01.2024 is marked and annexed as Annexure R7. A copy of the occupancy certificate dated 30.04.2024 is marked and annexed as Annexure R8. That despite multiple requests the complainant has failed to come forward and take the possession of the unit. That the Respondent also sent a reminder dated 19.02.2024 requesting the complainant to remit the balance payment and take the possession. The copy of the reminder letter dated 19.02.2024 is marked and annexed herewith as Annexure R9.

21. It is further submitted that the respondent in utmost bona fide credited the loyalty bonus of ₹ 67,572.50/- to the complainant at the time of offer of possession. That further the respondent has also given credit of ₹ 78,792/- to the complainant vide credit note dated 31.01.2024. The respondent has also sent the letter dated 01.06.2022 for the execution of the maintenance agreement, however, the complainant has failed to execute the same. The copy of the letter dated 01.06.2022 is annexed herewith as Annexure R10.

22. Despite facing various obstacles, respondent had issued a valid offer of possession to the complainant but despite this the complainant failed to make payment against the demand. That the respondent has earnestly requested the



complainant to obtain possession of the unit in question and further requested the complainant to complete all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to take the possession of the unit fell on deaf ears of the complainant.

23. During the course of arguments, learned counsel for the respondent rebutted that the complainant is a subsequent allottee and was aware of the fact that the project has been delayed. The respondent was gravely affected by a number of force majeure conditions including payment default made by complainant, despite which, the development was completed and the possession stands offered to the complainant on 17.01.2024. Occupation certificate has already been received on 30.04.2024. It is the complainant who has failed to make payment of due amount and take possession of the unit in question. Valid demand was raised with the offer of possession but the complainant failed to pay the same despite various reminder letters being issued to the complainant.

E. ISSUES FOR ADJUDICATION

24. 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



25. After hearing arguments advanced by both parties and pursuing documents placed on record, it is observed that a unit bearing no. H2-07-GF was provisionally allotted to one original allottee, Mr. Arun Kumar Sharma, in the project of the respondent namely "Park Elite Floor" vide allotment letter dated 24.12.2009. Later the said allotment was shifted from unit bearing no. H2-07-GF to a different unit bearing no. PE-195-GF tentatively admeasuring 1510 sq. ft vide re-allotment letter dated 12.06.2012. Thereafter, both parties executed a builder buyer agreement in respect of the unit bearing no. PE-195-GF on 12.01.2013 for a total sale consideration of ₹26,51,301.72/- against which the a total amount of ₹28,72,754/- has already been paid to the respondent. It is the submission of the complainant that the respondent has delayed delivery of possession of the booked unit beyond stipulated time. Therefore, the complainant has filed the present complaint seeking possession of the booked unit along with delay interest.

26. As per clause 5.1 of the builder buyer agreement dated 12.01.2013, possession of the unit was to be delivered within a period of 24 months from the date of execution of the agreement i.e by 12.01.2015. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of the said 24 months for making an offer of possession of the unit. As per facts, the respondent has failed to complete the construction of the unit within stipulated time period and make an offer of possession to



the complainant between 13.01.2015 to 12.07.2015 i.e the grace period. It is the respondent who has failed to fulfill its obligation. 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. Thus the deemed date of possession works out to 12.01.2015.

27. The respondent has 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. Respondents have 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, respondents have 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,



respondents 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”

28.As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainants by 12.01.2015. However, respondents failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainants on 17.01.2024. Said offer of possession was not acceptable to the complainant as it was issued without obtaining occupation certificate. It is further the contention of the complainant that the promised

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facilities/amenities were not present at the site at the time of offer of possession and also the unit was not ready for handing over. On the other hand it has been submitted by the respondent that the offer of possession was issued after completion of development works as per the terms agreed between the parties. Further the respondent had also obtained occupation certificate for the unit of the complainant on 30.04.2024. Complainant had deliberately failed to come forward and accept possession after making payment of balance amount.

29. In this regard it is observed that admittedly the respondent had issued the alleged offer of possession to the complainant without obtaining an occupation certificate. Thereafter, the respondent had issued a reminder notice dated 19.02.2024 to the complainant for making payment of balance sale consideration and taking over of possession. However, no communication was made by the respondent with regard to status of occupation certificate in the offer of possession as well as the reminder letter. Although the respondent had continuously communicated to the complainant that the unit was ready for possession, but, in the absence of receipt of occupation certificate, the complainant could not have positively ascertained that the unit was in a habitable condition. Also, this is the primary contention of the complainant that the unit in question was not ready for possession at the time of issuance of offer letter dated 17.01.2024. The complainant in support of its contention has placed on record photographs of construction site. However, the said are



undated and without any markings to show that they are in fact the actual photographs of the unit/project in question, hence the same are not being relied upon. Nevertheless, it is an admitted fact that the unit in question had received occupation certificate on 30.04.2024. However, the respondent failed to communicate to the complainant that receipt of the same. Strangely, after 30.04.2024, respondent did not issue any intimation/ demand letter to the complainant apprising her 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. A valid offer of possession constitutes intimation regarding status of unit, status of receipt of occupation certificate and balance payables and receivables amount in respect of the unit for which possession has been offered to ensure a smooth hand over of possession of the unit. Since the offer of possession dated 17.01.2024 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. From the receipt of occupation certificate till date, respondent has not issued a fresh offer of possession to the complainant conveying the same.

30. In nutshell, as per floor buyer agreement dated 12.01.2013, possession of the unit in question should have been delivered by 12.01.2015. However, respondent failed to deliver possession of the unit within stipulated time. Due



to inordinate delay in delivery of possession the original allottee could not continue with the project and had transferred the booking rights qua the unit in favor of the complainant and the same was endorsed by the respondent on 25.05.2022. Thereafter, an offer of possession was issued to the complainant on 17.01.2024. However, said offer of possession was issued without obtaining an occupation certificate. Complainant was not obliged to accept the said offer of possession. Even after receipt of occupation certificate on 30.04.2024, the respondent failed to convey the same to the complainant. Thus, a valid offer of possession has not been issued to the complainant till date.

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. In this regard, the respondent has contended that since the complainant in this case is a subsequent allottee, therefore, the period of delivery of possession should be reckoned from the date of nomination i.e 25.05.2022 as also the start of period for which the delay interest is admissible to her.



31. As per facts, the rights qua the unit in question originated from the rights adorned by original allottee Mr. Arun Kumar Sharma, which were later transferred to the complainant when she stepped into the shoes of the original allottee on 25.05.2022. In this regard it is observed that the complainant had been acknowledged as allottee by the respondent in respect of the unit in question vide endorsement letter dated 25.05.2022. No fresh agreement was executed between the complainant and the respondent. A bare perusal of the endorsement form reveals that vide said form the complainant is deemed as allottee in respect of the unit in question and the application form/builder buyer agreement dated 12.01.2013. In this letter it has further been mentioned that the parties will be bound by all the terms/conditions of the said builder buyer agreement thereof. Also all the instalments paid by the original allottee had been endorsed in favour of the complainant. Thus it becomes quite clear that the complainant had stepped into the shoes of the original allottee. There is no written agreement/document between the complainant and the respondent wherein it has been agreed that the period of delivery of possession will be reckoned from the date of nomination. Thus the contention of the respondent that the due date of possession should be reckoned from the date of nomination/endorsement is rejected. The deemed date for delivery of possession shall be reckoned as agreed by way of builder buyer agreement. Hence the deemed date of possession for all intents and purposes remains unchanged as 12.01.2013



32. It is further observed that the unit was endorsed in the name of the complainant after coming into force of the RERA Act of 2016. The Act does not differentiate between the original allottee and the subsequent allottee once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter. The subsequent allottee, the complainant in this case, enters into the shoes of the original allottee for all intents and purposes and shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. The endorsement was made in the name of the complainant when the Act became applicable. Thus, the statutory right under section 18(1) of Act, 2016 had already occurred in his favour. In present case, the due date for possession as per the agreement remains unchanged and the respondent is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act.

The respondent has placed reliance on the judgement of the Hon'ble Supreme Court titled as **"M/s Laureate Buildwell Pvt Ltd vs Charanjeet Singh"** in which it is observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession and is thus not entitled to similar relief. Authority observes that the findings



made by the Hon'ble Supreme Court in the Laureate judgement are applicable in cases where the builder buyer agreement was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act 2016 coming and as such the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. Further in this particular case, the complainant had stepped into the shoes before the RERA Act came into being. The plea of the respondent does not hold weight in present complaint since the unit has been transferred in the name of the complainant after coming into force of the RERA Act. Though the complainant was well aware about the delay that has been caused in the delivery of the project and did not suffer for that period. However, the complainant was also well aware of the rights bestowed upon her as per Section 18 of the RERA Act 2016 which allowed her the same rights as that of the original allottee in terms of the agreement and payment of delayed possession charges. When the respondent transferred the unit in the name of the complainant, respondent- builder was also well aware about the Section 18 of the RERA Act and the consonance between the term allottee and subsequent allottee. Respondent cannot shy away from performing its obligations as per the terms of the agreement and the provisions of the RERA ACT 2016. Complainant is rightly entitled to seek delay possession interest from the due date of possession i.e 12.01.2015. Therefore, the Authority is of the view that the delayed possession charges



shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement i.e., 12.01.2015 till the date of valid offer of possession is issued to the complainant. 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"



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

34. 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 16.09.2025 (in ₹)
1.	25,18,633/-	12.01.2015	29,20,638/-
2.	3,14,503/-	21.08.2017	2,75,700/-
3.	39,799/-	17.01.2024	7,201/-
Total:	28,72,915/-		32,03,539/-
Monthly Interest:	28,72,915/-		25,620/-

In captioned complaint, the complainant has paid a total amount of ₹ 28,72,915/- as has been admitted by the respondent vide statement of accounts dated 17.01.2024. However, the complainant has annexed



receipts to the tune of ₹ 28,33,136/- only. Therefore, for the remaining amount of ₹ 39,779/- the date of payment is being taken as 17.01.2024 for the purpose of calculation of interest.

35. 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.

36. 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.

37. The complainant is also seeking relief of deficiency in services as the promised amenities had not been developed at the site by the respondent. For this the complainant an allottee is entitled to claim compensation under Sections 18(3) of the RERA Act which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

38. Further with regard to the contention of the respondent that the complainant had executed an indemnity cum undertaking with waiver clause it is observed that the Authority is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainant to sign any such affidavit or indemnity-cum-undertaking and as to why the complainant had agreed to surrender her legal rights which were



available or had accrued in favour of the original allottees. In the instant matter in dispute, it is not the case of the respondent that the re-allotment of the unit was made in the name of the subsequent purchaser after the expiry of the due date of delivery of possession of the unit. Thus, so far as the due date of delivery of possession had not come yet and before that the unit had been re-allotted in the name of the subsequent allottee, the subsequent-allottee will be bound by all the terms and conditions of the builder buyer's agreement including the rights and liabilities. Thus, no sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by her, she will not be given any relief and she is thus left with no other option but to obey these conditions. Exactly same situation has been demonstratively happened here, when the subsequent-allottee had been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in the name of the subsequent allottee otherwise such transfer may not be allowed by the promoter. Such an undertaking/ indemnity bond given by a person thereby giving up her valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this



authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by hon'ble NCDRC in case titled as Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015, wherein it was held that the execution of indemnity-cumundertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC

G. 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. Respondent is directed to pay upfront delay interest of ₹ 32,03,539/- (till date of order i.e 16.09.2025) 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 @ ₹25,620- 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(in respective complaints) 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.
- iv. Complainant will remain liable to pay conveyance deed charges, if any, to the respondent at the time of taking over of possession.
- v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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]