



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	826 of 2024
Date of filing.:	10.06.2024
First date of hearing.:	06.08.2024
Date of decision.:	12.08.2025

1. Gyan Prakash Wadhwa s/o Sh. Ram Narain Wadhwa
2. Indu Bala w/o Sh. Gyan Prakash Wadhwa
Both R/o H.no 213, Sector 11 D
Faridabad, Haryana

....COMPLAINANTS

VERSUS

M/S BPTP Limited
Regd Office at OT-14, 3rd Floor,
Next Door Parklands, Sector-76,
Faridabad, Haryana- 121004,
Also at M-11, Middle Circle Connaught Circus,
New Delhi, 110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**

Chander Shekhar **Member**

Present: - Mr. Aditya Gautam, Counsel for 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 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 Premium, Sector 77, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	G-01, Ground Floor, Tower G, admeasuring 1128 sq. ft.
6.	Date of builder buyer agreement	06.01.2011



7.	Due date of possession	06.01.2014
8.	Possession clause in BBA (Clause 3.1)	<p>Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(S) within a period of 36 months from the date of issuance of the sanction letter of the Colony. The Purchaser(s) agrees and understands that the Seller / Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority The Seller / Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days.</p>
9.	Basic sale consideration	₹ 22,80,997/-



10.	Amount paid by complainant	₹28,76,129/-
11.	Offer of possession.	Undated

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

- Facts of complaint are that the predecessor of the complainant Mr. Mohd. Hasan Khan had booked a unit in the project of the respondent namely "Park Elite Premium" situated at Sector 76, Faridabad, Haryana on 30.06.2009 by paying a booking amount of ₹ 2,50,000/-. A builder buyer agreement was executed between both the parties on 06.01.2011 and the original allottee was allotted unit bearing no. G-01, Ground Floor, Tower G admeasuring 1128 sq. ft. in the said project. The basic sale consideration of the unit was fixed as ₹ 22,80,997/-.
- As per clause 3.1 of the agreement possession of the unit was to be delivered within a period of thirty six (36) months from the date of issuance of sanction letter of the colony. Further, the respondent was allowed a period of 180 days for filing and pursuing grant of occupation certificate.
- Thereafter, the predecessor of the complainant could not continue with the project and transferred his rights of the unit in question to the complainant vide agreement to sell dated 21.01.2013. The nomination



was endorsed in favour of the complainant by the respondent on 30.01.2013. The nomination included the right to claim damages and delay penalty, being actionable claims, from the deemed date of possession in accordance with the allotment and buyers' agreement. The respondent had received a total payment of ₹ 28,76,129/- till the date of nomination and endorsement of the unit in favor of the complainant in present complaint. Thereafter, complainant continued making further payments.

6. As per the agreement, possession of the unit should have been handed within 36 months from date of issuance of sanction of colony. However, said date is unavailable and arbitrary. Rather taking a period of 36 months from the date of execution the agreement, the period of delivery of possession was over by 06.01.2014, however, respondent has failed to offer possession within stipulated time to the complainants.
7. That in May 2022, the complainants received an undated letter from the respondent vide which the offer of possession was made for the unit question and along with that the respondent had raised a demand of ₹ 18,65,918/- from the complainants. Vide said offer the respondent had wrongly mentioned the size of the unit as 1236 sq. ft. instead of the promised 1128 sq. ft. and had further raised illegal demands on account of cost escalation charges, club membership charges, electrification and



STP charges, power backup charges and service tax. The complainant visited the office of the respondent company to inquire about the same but did not receive a proper response. Further the unit in question did not have an occupation certificate.

8. Thereafter, instead of resolving the grievances of the complainants, the respondent rather cancelled the allotment of the complainants on 03.09.2022 on frivolous grounds of non payment of dues. The complainants sent legal notice dated 29.10.2022 to the respondent for regarding the alleged cancellation but received no response.
9. It is submitted that more than 10 years have passed since the proposed date of possession but the respondent has failed to issue a valid offer of possession to the complainants. Therefore, the complainant has filed the present complaint seeking possession of the booked unit along with delay interest for delay caused in delivery of possession.

C. RELIEF SOUGHT

10. That the complainant seeks following relief and directions to the respondent:-
 - i. To quash the termination letter dated 03.09.2022
 - ii. To direct the respondent to hand over the possession of the unit G01, Tower G to the complainants complete in all respect.


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- iii. To direct the respondent to pay delay penalty in terms of Section 18 of the Act and to waive off unnecessary charges raised vide offer of possession.
- iv. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

11. During the course of hearing, learned counsel for the complainants submitted that respondent had offered possession to complainants without obtaining occupation certificate. Further, along with said offer of possession, respondent had issued a statement of account of payable and receivable amounts which was not acceptable to the complainants for the reasons that firstly the respondent had unilaterally increased the area of the unit and secondly the respondent had raised illegal demands on account of cost escalation charges, club membership charges, electrification and STP charges, power backup charges and service tax. These demands are not payable by the complainants. The complainants visited the office of the respondent company to discuss these demands but did not receive any positive response. No occupation certificate was conveyed to the complainant along with said offer of possession. That thereafter, instead of resolving the illegal demands, respondent arbitrarily cancelled the allotment of the complainant vide termination letter dated 03.09.2022.



12. Further, from booking of the unit till date, the respondents have never informed the complainants about any force majeure or any other circumstances which were beyond the reasonable control of the respondent and has led to delay in completion and development of the project within the time stipulated. The respondent was bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the buyers agreement. However, the respondent has miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects.

13. Learned counsel for the complainants further submitted that in the captioned complaint the total paid amount has been wrongly mentioned as 29,39,259/-. However, the actual paid amount is ₹ 28,76,129/- only.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 09.12.2024 pleading therein:

14. That the unit in question was booked by the original allottee in the year 2009. Vide allotment letter dated 16.12.2009 the original allottee was allotted unit bearing no. G-G01, Tower G admeasuring 1128 sq ft. in the project being developed by the respondent.

15. After thorough reading and understanding of the terms of builder buyer agreement and agreeing to all the terms and conditions mentioned therein,



said builder buyer agreement was executed between the respondent and the original allottee on 06.01.2011.

16. Thereafter the original allottee transferred the unit in question to the complainants. Considering which the respondent endorsed and nominated the unit in the name of the complainants on 30.01.2013. The complainants had purchased the unit in question from the original allottees. At the time of endorsement the complainant was made aware of the fact that the possession of the unit is dependent upon force majeure conditions as well as timely payment of each instalment. 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. That without prejudice to the submissions of the respondent that the subsequent allottee has no right to any delayed possession charged, it is submitted that as per the agreement the possession was proposed to be



handed over within a period of 36 months from the date of issuance of sanction letter of the colony along with a grace period. 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.

18. However, the unit was endorsed in the name of the complainants on 30.01.2013, hence the computation of the due date of possession should start from the date of endorsement in favour of the complainants and not as per the buyer's agreement. In such manner the due date of possession comes out to 30.07.2016.
19. 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.

20. That in addition to the above mentioned, the construction was also affected by the act of non-receipt of timely payment against the unit. Complainants have been in default of timely payment of the demands since the very beginning. Despite there being a number of defaulters, including the present complainants, the respondent had to infuse funds in the project and has diligently developed the project in question. The respondents completed construction of the project and applied for the grant of occupancy certificate on 13.05.2019 and received the same on 21.08.2023. The offer of possession was duly made on 13.04.2022. The respondent had earnestly requested the complainant to make payment of balance sales consideration and take possession of the unit. It was the obligation of the complainant to make the payments as per the provisions


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of the RERA ACT and the buyers agreement executed between the parties.

21. Upon the non payment of the dues by the complainants, the complainants have defaulted under clause 11.1 of the buyers agreement and upon the failure of the complainant to rectify the default, the respondent had the right to terminate the unit of the complainants in accordance with the said clause. Copies of reminder notice date 19.05.2022, 23.06.2022, 02.08.2022 and termination letter dated 03.09.2022 are annexed as Annexure R8(colly). That after the termination of the allotment of the unit of the complainants, the respondent is well within its right to forfeit the earnest money along with the delayed payment interest till the date of termination and other non-refundable charges.

22. During the course of arguments, learned counsel for respondent submitted Learned counsel for the respondent submitted that the offer of possession was made to the complainant on 13.04.2022 however, the complainant failed to make the payment of outstanding amount and take possession of the unit till date even after reminder notice dated 19.05.2022, 23.06.2022 and 02.08.2022 were issued to the complainant. All demands were raised as per the buyers agreement. However, in view of continuous default on the part of the complainant, the respondent was constrained to cancel the allotment of the complainant on 03.09.2022.


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E. ISSUES FOR ADJUDICATION

23. Whether the complainants are 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

24. As per facts and circumstances, a unit was booked in the project being developed by the respondent namely "Park Elite Premium" situated at Sector 76, Faridabad, Haryana by one original allottee namely Mr. Mohd. Hasan Khan on 30.06.2009. A builder buyer agreement was executed between both the parties on 06.01.2011 and the original allottee was allotted unit bearing no.G-01, Ground Floor, Tower G admeasuring 1128 sq. ft. in the said project. As per clause 3.1 of the agreement, possession of the floor was to be delivered within a period of 36 months from the date of issuance of sanction letter of the colony. Further, the respondent was allowed a period of 180 days for filing and pursuing grant of occupation certificate. The total sale consideration for floor was fixed at ₹ 22,80,997/-. Thereafter, the complainants purchased the booking rights qua the unit in question from the original allottee and the unit was endorsed in the name of the complainants vide letter dated 30.01.2013. A total amount of ₹ 28,76,129/- has been paid to the respondent in lieu of the booked unit. It is the submission of the complainants that the respondent has delayed delivery of possession beyond stipulated time.


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Complainants have filed the present complaint seeking possession of the booked unit along with delay interest.

25. As per clause 3.1 of the agreement possession of the unit should have been delivered within a period of 36 months from the date of issuance of sanction letter of the colony. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to issuance of sanction letter of the colony that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder 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. Further, there is also no mention of any date for sanction of the building. Thus the respondent cannot be allowed to take advantage of a vague and arbitrary drafting, and the deemed date of possession shall be computed from the date of execution of the builder buyer agreement. The agreement further provides that the respondent shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate. As a matter of fact, the respondent did not apply to the concerned Authority for obtaining occupation certificate within the time limit prescribed by the respondent in the builder buyer agreement i.e immediately after completion of construction works within 36 months. 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 for delivery of possession of the booked unit works out to 06.01.2014.

The respondent in its submission has contended that since the complainants in this case are subsequent allottees, therefore the period stipulated in the agreement for delivery of possession should be reckoned from the date of endorsement/ nomination. In this regard it is observed that the complainants had been acknowledged as allottee by the respondent in respect of the unit in question vide endorsement letter dated 30.01.2013. A bare perusal of the said letter reveals that vide said letter the complainants henceforth were made responsible to abide by all terms and conditions in respect of the booking of the unit in question. Also all the instalments paid by the original allottee had been endorsed in favour of the complainants. Thus it becomes quite clear that the complainants had stepped into the shoes of the original allottee. The subsequent allottees had purchased the unit well before the expiry of the due date so they cannot be expected to have knowledge by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. Further 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


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be reckoned from the date of nomination. Thus the contention of the respondent 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 06.01.2014.

26. 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, COVID-19 outbreak hit construction activities post 22.03.2020 i.e six years after the 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”

27. As per observations recorded above, the possession of the unit in question should have been delivered by 06.01.2014. However, respondent failed to complete construction of the unit and deliver possession within the time period stipulated in the buyer's agreement. Thereafter, an undated offer of possession was issued to the complainants in the year 2022, after a gap of more than 8 years from the due date of delivery of possession and further the respondent had raised unreasonable demand of ₹ 18,65,918/-. Said offer of possession



was unacceptable to the complainants as it was not a valid offer of possession. It is the contention of the complainants that the respondent had issued the said offer of possession without obtaining occupation certificate and had raised further illegal demands on account of cost escalation charges, club membership charges, electrification and STP charges, power backup charges and service tax which are not payable by the complainants. 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 complainants on 21.08.2023. Complainants deliberately defaulted in making payment of outstanding amount due to which the respondent was constrained to cancel the allotment of the complainant vide letter dated 03.09.2022.

In this regard it is observed that respondent had issued an undated letter of offer of possession to the complainants in the year 2022. It is the submission of the complainants that they had received this offer of possession in the month of May 2022. However, the respondent in its reply has submitted that the possession was offered to the complainants on 13.04.2022. As proof the respondent has placed on record a copy of a letter dated 13.04.2022 titled as "offer of possession " along with the



copy of undated offer of possession annexed by the complainants. On perusal of record there is no proof of service/ dispatch record affixed with this letter dated 13.04.2022 to prove that the same had actually been received by the complainants. Therefore, Authority is unable to rely on this letter. As per available record and submissions, it is noted that the respondent had sent an undated letter of offer of possession to the complainants sometime in the month of May 2022. This offer of possession was received without obtaining occupation certificate. Throughout the period from May 2022 till before the date of receipt of occupation certificate, respondent had issued reminder notices dated 19.05.2022, 23.06.2022 and 02.08.2022 to the complainants 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 complainants that the unit was ready for possession, however, in the absence of receipt of occupation certificate the complainants could not have positively ascertained that the unit was in a habitable condition. Since, the alleged offer of possession (undated) was issued without obtaining occupation certificate thus the said offer was not a valid offer of possession. Complainants could not have been forced to accept the same. As per facts, the respondent had cancelled the allotment of the


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complainants vide letter dated 03.09.2022 on account of non payment of dues, when in fact a valid offer of possession was not issued to the complainants 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 complainants after forfeiture of earnest money, however, the respondent illegally retained the entire amount paid by the complainants, thus enjoying wrongful gains and causing wrongful loss to the complainants. It is also imperative to note that the occupation certificate qua the unit in question was granted on 21.08.2023 i.e nearly a year after the alleged cancellation of allotment by the respondent. Meaning thereby the unit in question was not in a habitual position at the time when the respondent had issued an offer of possession to the complainants and also at the time of cancellation of allotment. Therefore, in light of these facts, it is germane to say that the cancellation of the allotment of unit vide letter dated 03.09.2022 is unlawful and bad in the eyes of law. Respondent could not have cancelled the unit of the complainants 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 complainants. Thus the allegation of the respondent that the complainant had defaulted in making payment of instalments is found to be devoid of merit.

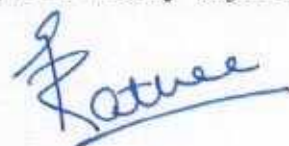
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It is further the contention of the complainant that the demands raised vide statement of accounts issued along with offer of possession letter are not in consonance with the builder buyer agreement and are hence not payable. In this regard, it is observed as follows;

- a. With regard to the demand of cost escalation charges of ₹7,35,420/-, it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 06.01.2014. Respondent has issued an offer of possession to the complainant in the year 2022 after a gap of nearly 8years. 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 respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a 10-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. Therefore, demand raised by the respondents on account of cost escalation charges shall be set aside.



- b. With regard to demands raised on account of Electrification and STP charges (₹ 38,909/-) and power backup charges (₹ 75,000/-) it is observed that vide clause 2.1 sub-clause 'a' and 'f' of the buyer's agreement dated 06.01.2011 the complainants had agreed to pay these charges to the respondent. Since these charges are in consonance with the buyer's agreement, the complainants cannot shy away from their obligation of making requisite payments. Hence, these charges are payable by the complainants.
- c. With regard to the demand raised by the respondents on account of service tax, it is observed that these charges were agreed to be paid by the complainants under 'statutory dues' in the buyers agreement. Hence, these charges stand payable by the complainants.
- d. With regard to the demand raised by the respondent on account of club membership charges , Authority observes that these can only be levied when the club facility is physically located within the project and is fully operational. However, no documentary evidence has been filed on record to establish the fact that the club's facility is operational at site. Complainants have submitted that the proposed club has not been constructed till date. Respondent has not placed any document/photograph to negate the claim of the complainants. This situation makes it clear that the promised club facility is non-existent at this stage, and the demand for club charges is wholly unjustified. Since



the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it in future as and when a proper club will become operational at site.

- e. With regard to charges raised on account of increase in area below 15%, it is observed that as per clause 2.4 (i) of the buyer's agreement it was agreed between the parties that any increase or decrease in sale consideration on the basis of increase or decrease in the super area of the unit shall be payable or refunded without any interest thereon and at the same rate. In the present case, the increase in area is within the agreed limit and since the complainants have opted to continue with the project, therefore the same is payable by the complainants.

28. In nutshell, as per the builder buyer agreement possession of the unit should have been delivered to the complainants on 06.01.2014. However, respondent failed to deliver possession of the unit within stipulated time. An undated offer of possession was issued to the complainants in the month of May 2022. Along with said offer of possession respondent had issued a detailed statement of account of payable and receivable amounts which has been challenged by the complainant on account of several discrepancies that have been already adjudicated in para 29 of this order. Further said offer of possession was without an occupation certificate. Complainants could not

have accepted the said offer of possession. Thereafter, the respondent received occupation certificate on 21.08.2023, however, the same was not conveyed to the complainants. From the receipt of occupation certificate till date, respondent has not issued a fresh offer of possession to the complainants conveying the same.

Admittedly there has been an inordinate delay in delivery of possession but the complainants wish 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 complainants are 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 complainants. So, the Authority hereby concludes that complainants are entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 06.01.2014 till a valid offer of possession is issued to the complainants. 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”

29. Hence, Authority directs 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 10.90% (8.90% + 2.00%) from from the due date of possession till the date of a valid offer of possession.



30. 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 in respective complaints as mentioned in the tables 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 12.08.2025 (in ₹)
1.	28,76,129/-	06.01.2014	36,39,154/-
Total:	28,76,129/-		36,39,154/-
Monthly Interest:	28,76,129/-		25,767/-

31. It is pertinent to mention that in the captioned complaint, complainant has received timely payment discount from the respondent 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 respondent but complainant cannot be denied his rights especially when the respondent company itself considers this as a paid



amount as per payment policy. Therefore, the complainant 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 respondent.


G. DIRECTIONS OF THE AUTHORITY

32. 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 ₹ 36,39,154/- (till date of order i.e 12.08.2025) 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 @ ₹ 25,767/- 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 30 days of uploading of this order. Complainant shall accept the offer of possession within the next 30 days of the fresh offer.



- iii. Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession.
- iv. The respondent shall not charge anything from the complainants which is not part of the agreement to sell.
33. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


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DR. GEETA RATHEE SINGH
[MEMBER]