HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**465 of 2023**
Date of filing.:	**24.02.2023**
First date of hearing.:	**04.03.2024**
Date of decision.:	**16.09.2025**

Ajay Kumar S/o Sh. Dharavir Bhasin ....COMPLAINANT
R/o H. No. 2026, Sector-7, Urban Estate Karnal,
Haryana 132001

VERSUS

1.BPTP LTD.
2. M/s Countrywide Promoters Private Limited
3. Business Park Maintenance Services Pvt Ltd.
Having registered office at: M-11, Middle
Circle Connaught Circus New Delhi 110001 ....RESPONDENTS

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

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 24.02.2023 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for

Rathee

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.	Parklands, Sector 78, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	P-05A-GF
5.	Date of allotment	24.12.2009
6.	Date of builder buyer agreement	24.06.2010
7.	Possession clause in plot buyer agreement (Clause 4.1)	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

Rattree

		courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if 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).
8.	Due date of possession	24.06.2012

9.	Basic sale consideration	₹ 25,04,882/-
10.	Amount paid by complainant	₹32,48,659/-
11.	Offer of possession.	21.11.2022

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. Akhil Sharma, in the year 2009. Vide allotment letter dated 24.12.2009 Mr. Akhil Sharma was allotted unit bearing No. P-05A-GF, Block-P Ground Floor, measuring 1418 sq. ft in the said project.

4. A builder buyer agreement was executed between the original allottee and the respondent on 24.06.2010 for the unit bearing No. P-05A-GF . The basic sale price of the unit was fixed at ₹ 25,04,882/-.

5. As per Clause 4.1 of the builder buyer agreement respondent was supposed to hand over the possession of the unit within 24 months from the date of sanction of building plans. Further, the respondent was allowed a period of 180 days for making an offer of 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 2014. That the respondent endorsed the unit in the name of the complainant vide endorsement letter dated 14.05.2014.

7. Thereafter, respondent had issued an offer of possession in respect of the unit in question on 21.11.2022 after a delay of nine years. The respondent had received the occupation certificate on 09.05.2022. However, 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-7.

8. It is further submitted that along with said offer of possession, the respondents had raised several illegal and arbitrary demands in respect of VAT charges,cost escalation, club charges, Electrification and STP charges and GST charges. The respondents also forced the complainant to sign and submit and indemnity cum undertaking favouring the respondent-promotors. Vide further the complainant had to give an undertaking that the possession of the unit was taken after inspection and verification, however, till date the respondents have not let the complainant inspect the unit in question.

9. Furthermore, the respondents had raised invoice for the maintenance services against the unit in question despite the unit being incomplete. The

respondent no. 3 is asking the complainant to sign a one sided agreement on account of maintenance services.

10. That the respondent has charged ₹ 1,18,574/- on account of Enhanced External Development Charges (EEDC) from the complainant. However, the applicability of the same was stayed by the Hon'ble High Court.

11. There is not even a single default/delay on the part of the complainant in making the payment to the respondent. Till date a total amount of ₹ 32,48,659/- has been paid to the respondents.

C. RELIEF SOUGHT

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

i. Direct the respondents to deliver immediate possession of the unit bearing no. P-05A Park Elite Floors, Parklands, Sec 75 to 89, Faridabad, Haryana, admeasuring 1510 sq. ft.. The complainant be allowed a pre-inspection of the unit before singing any of the undertaking qua the quality of the constructed unit.

ii. Direct the respondents to pay prescribed rate of interest as per the act, on the amount already paid by the complainant from the due date of delivery till the physical possession for the delay caused in delivery of possession.

iii. That the demand raised on account of GST be quashed as the same is not payable by the complainant.

iv. Direct the respondents to refund the VAT amount charged from the complainant.

v. Direct the respondents to not raise demand on account of club charges as there is no club in existence till date.

vi. Direct the respondent to not charge any PLC charges as the same do not apply to the unit in question.

vii. That the amount charged on account of EEDC should be refunded or in alternate respondent submit proof of deposit of the same with concerned Authority.

viii. That the respondents although offered the possession of the unit however, the work of the floor is still in progress i.e. incomplete. That the complainant further demands:-

a. That the unit offered may kindly be measured in their presence to make area 1571 sq ft.

b. The quality of fixtures/ fixations are cross checked and verified before signing of any possession document.

c. The quality of wall plaster, finish is to be verified first before start of painting job.

d. The woodwork of the unit especially the kitchen work and the quality of the material used.

ix. The signing of the unnecessary clauses/ Annexure attached with the offer of Possession may kindly be set aside. The offer of possession (Annexure C5) be cancelled / quashed and the respondents be directed to issue a fresh one after considering the grounds of the complaint.

13. During the course of arguments, learned counsel for the complainant Mr. Vikas Chaudhary, submitted that the unit purchased by the complainant does not attract any preferential charges. As per the agreement the PLC charges are admissible on unit situated on road over 12 metre but up to 18 metres in width. The road facing the unit of the complainant is a 12 metre road and not over. Further there is a 45 metre sector road but the same is not in the ownership of the respondent. This road actually bifurcates the respondent's project from the adjoining sector and there is no direct access to the same. Learned counsel for the complainant further drew attention of the Authority to the photographs of the unit filed along with additional written submission dated 22.04.2025 submitting that the complainant is not in possession of the unit in question. The respondents have given on rent/personal benefit the said unit to somebody else who have been mis-utilising the unit booked by the complainant. The photographs clearly show misuse of the property and its deteriorated condition. The offer of possession issued by the respondents on 21.11.2022 is not acceptable as the unit is still not in a habitable condition. The respondents are liable to handover possession of a habitable unit to the complainant. Further, since

legal possession of the unit is yet to be handed over, the complainant is liable to receive delay interest till vacant possession is actually handed over to the complainant as per the specifications and due demarcation. With regards to maintenance charges and electricity charges it is submitted that since the complainant does not have the actual physical possession of the unit and the same is being utilised by the respondents, therefore, the complainant is not liable to pay for the maintenance & electricity charges. Complainant will become liable only after handover of legally valid possession. Lastly, the respondent has also unilaterally changed the area of the unit as per its own whims and fancies. It is submitted that the area of the unit as per the agreement was 1418 sq. ft whereas in the alleged offer of possession, the area of the unit was mentioned as 1571 sq. ft. However, as per the occupation certificate, the area of the unit is 1242.037 sq ft. The area of the unit has ultimately been reduced from 1418 sq. ft to 1242.037 sq. ft. The respondents should be directed to charge only for the area that is being actually given to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 04.03.2024 pleading therein:

14. 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

"Parklands" being developed at Sector-78, Faridabad. Accordingly, an application booking form was executed by the original allottee on 19.05.2009. Consequently, the unit, a plot bearing no. P-05A-GF, Ground Floor, admeasuring 1571 sq. ft. was allotted on the basis of the tentative layout plan vide allotment letter dated 24.12.2009.

15. That thereafter, a builder buyer's agreement was executed between the original allottee and the respondent on 24.06.2010. A copy of the floor buyer's agreement dated 24.06.2010 is annexed and marked as Annexure R3. The original allottee and the complainant entered into an agreement to sell dated 14.05.2014 and requested the respondent no. 1 to endorse the unit in favour of the complainant. That the unit was endorsed in favour of the complainant on 14.05.2014, thus, all rights and obligations between the parties come in effect from the date of nomination of the complainant.

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 sanction of building plans along with 180 days 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. The building plan was compounded on 07.06.2022 and thus calculating the due date from this date, it comes out to be 07.12.2024.

18. 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 respondent in accordance with clause 5.1 and clause 14 of the agreement.

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 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.

20. 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.

21. That despite facing innumerable hardships, respondent no. 1 completed construction of the project and thereafter, offered possession of the booked unit to the complainant on 21.11.2022 after receipt of occupation certificate on 07.06.2022. Along with said offer, complainants were asked to make the requisite payment of outstanding balance vide statement of account and complete documentation of final dues to initiate the process of physical

possession of the floor, however, the complainants never turned up to take possession of the floor.

22. During the course of arguments, learned counsel for the respondent submitted that the PLC charges are being validly charged from the complainant for a 12 metre service road and a 45 metre sector road. The unit booked by the complainant is on a 12 metre road and thereafter lies a 45 metre road. The area in between the service road and sector road is green space which has been demarcated by the state government and the respondent has no role in the same. The complainant is raising frivolous arguments just to deny the offer of possession. Fact of the matter is that respondent had issued a valid offer of possession dated 21.11.2022 to the complainant after completing all formalities and receiving occupation certificate dated 07.06.2022. Complainant was duty bound to accept the said offer and take over possession of the unit after making payment of balance sale consideration. However, the complainant failed to do so. Further as per clause 1.5 and 10.5 of the agreement, complainant is liable to pay maintenance charges and electricity charges since a valid offer of possession has already been issued to the complainant. Complainant has alleged that the respondent is mis-utilising the unit in question, however, the complainant has failed to submit any document that verifies his claim. The photograph placed on record do not show that the unit is being utilised. The allegations of the complainant are baseless and thus liable to be dismissed.

E. ISSUES FOR ADJUDICATION

23. 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

24. As per facts and circumstances, the original allottee namely Mr. Akhil Sharma had approached the respondents for booking of a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75, 82 and 85 Faridabad, Haryana in the year 2009. Vide allotment letter dated 24.12.2009, the original allottee was allotted plot bearing No. P-05A-GF, Block-P Ground Floor, measuring 1418 sq. ft in the said project. A builder buyer agreement was executed between the original allottee and the respondents on 24.06.2010 for the unit bearing No. PE-195-GF . The basic sale price of the unit was fixed at ₹ 25,56,002/-. Subsequent to this, the original allottee, being unable to continue with the project, sold the booking rights qua the plot no. P-05A-GF to the present complainant. As per Clause 4.1 of the builder buyer agreement respondent was supposed to hand over the possession of the unit within 24 months from the date of sanction of building plans. Further, the respondents were allowed a period of 180 days for making an offer of possession of the unit. It is the submission of the complainant that the respondents have failed to complete the construction of the project and

deliver possession of the booked unit. Therefore, the complainant has filed the present complaint seeking possession of the booked unit along with delay interest.

25. As per clause 4.1 of the builder buyer agreement possession of the unit was to be delivered within a period of 24 months from the date of sanction of building plans. 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. 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. 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 24.06.2012.

26. 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 due 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"*

27. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 24.06.2012. 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 21.11.2022 after receipt of occupation certificate on 07.06.2022. Said offer of possession was not acceptable to the complainant since the respondents had failed to complete the construction work at the site

and develop the promised amenities. Also along with said offer of possession respondents had raised a further demand of ₹ 8,87,026.80/-. These demands have 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, GST charges, Club charges, Electrification and STP charges and VAT 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 respondents. It has also been alleged by the complainant that at the time when the possession was offered the unit was being misutilised by the respondents for personal gains by renting it out to an outside party. Thus for these forgoing reasons the complainant could have accepted the possession of the unit as on 21.11.2022. On the other hand, respondents have submitted that the demands raised vide offer of possession dated 21.11.2022 were in consonance with the terms of agreement executed between the parties and hence not payable by the complainant. The respondents have further submitted that the offer of possession dated 21.11.2022 had been duly issued after receipt of occupation certificate and completion of development works. The complainant should have accepted the said offer of possession.

28. With regard to the contention of the complainant that the respondents have also illegally charged cost escalation charges, GST charges, Club charges, Electrification and STP charges, VAT charges, PLC charges and EEDC charges, the Authority has carefully examined the statement of account issued along with offer of possession dated 21.11.2022 and observes as follows:

i. With regard to the cost escalation charges of ₹ 86,965.94/- , it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 24.06.2012. Respondents have issued an offer of possession to the complainant on 21.11.2022 after a gap of more than 10 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 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 be set aside.

ii. With regard to the demand raised by the respondent on account of club membership charges of ₹ 50,000/-, Authority observes that club membership charges can only be levied when the club facility is physically located within the project and is fully operational. In this case, it is essential to note that the Occupancy Certificate (OC) for the floor has been obtained by the respondent on 07.06.2022. However, no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Complainant has submitted that the proposed club has not been constructed till date. Respondents have 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, respondents will become entitled to recover it in future as and when a proper club will become operational at site.

The Authority has got calculated the interest admissible to the complainants on the amount of ₹ 35,400/- paid on account of Club membership charges and the same works out to ₹ 24,125/- as per the table mentioned below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till date of order i.e 16.09.2025 (in ₹)
1.	17,700/-	13.11.2018	13,154/-
2.	17,700/-	02.12.2019	11133/-
Total:	35,400/-		24,287/-

iii. With regard to the demand raised by the respondents on account of GST, Authority is of the view that the deemed date of possession in this case works out to 24.06.2012 and charges/taxes applicable on said date are payable by the complainant. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in delivery of possession has already been attributed on the part of the respondent's. In case the respondents had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the complainants are not liable to pay GST charges. Charges raised on account of VAT and service tax are payable to the Government. A bare perusal of clause 1.5 of the agreement reveals that the complainant has agreed to pay the said charges. Therefore, the same are to be levied by the respondent and payable on the part of complainant. In respect of demand of EEDC, it has been submitted that said demand

was raised by the respondent being a statutory demand and is passed onto the government authorities. Complainant is/was bound to remit the same and it was duly remitted without any protest.

iv. Complainant has raised an objection that respondent is charging maintenance charges without handing over actual possession. In this regard, it is observed that complainant is liable to maintenance charges after taking over possession of physical possession of the unit.

v. With regard to demands raised on account of Electrification and STP charges it is observed that vide clause 1.5 sub-clause 'g' and 'j' of the buyer's agreement dated 24.06.2012 the complainant had agreed to pay these charges to the respondent. Since these charges are in consonance with the buyer's agreement, the complainant cannot shy away from their obligation of making requisite payments. Hence, these charges are payable by the complainant.

vi. With regard to the PLC charges, it is the principle argument of the complainant that PLC charges are admissible on unit situated on road over 12 metre but up to 18 metres in width. However, the unit of the complainant is facing a 12 metre road and not over. Whereas it has been submitted by the respondent that the unit booked by the complainant is on a 12 metre road and thereafter lies a 45 metre road. The area in between the service road and sector road is green space which has been demarcated by the state government. In view of the

contradictory argument of both parties, it is observed that as per clause 1.5 of the builder buyer agreement, the complainant agreed to pay PLC charges for a unit lying on roads over 12 mtrs but upto 18 mtrs and/or for unit lying on sector roads and on roads over 18 mtrs. In present instance, the complainant is enjoying a 12 mtr service road and a further 45 mtr sector road. Though these two patches of road are divided by the green belt but there is no hindrance to complainant in accessing either of the roads. The complainant has complete access as the service road merges into the sector road. The complainant may utilise the same as per will. Therefore, the contention of the complainant is rejected.

29. The complainant in his complaint has alleged that at the time when possession was offered the respondents had been misutilising the unit in question by renting it out for personal gains. In support of his contention, the complainant has attached photographs of the building showing the board hanging over the unit of the complainant. However on perusal of the said photographs it is observed that the third party namely 'Kaushik Real Estate' has occupied the first floor of the building whereas the unit of complainant lies on the ground floor namely 'P-05A-GF'. It is apparently clear that the unit of the complainant is not being utilised by the respondents and is free from any encumbrances. Further, with regard to the contention of the complainant that the respondents have failed to develop the promised

facilities/ amenities at the site of the project, it is observed that the complainant has failed to highlight the basic facilities which are not available at the site due to which the complainant could not have taken over possession of the unit. Mere verbal submissions of the complainant cannot be accepted. Further, for discrepancies, if any, between the promised amenities and the amenities which are actually available at the site, the complainant is entitled to seek compensation before Hon'ble Adjudicating Officer for redressal of his grievances.

30. In view of the observations recorded in the foregoing paragraphs, it is observed that the respondents had issued an offer of possession dated 21.11.2022 to the complainant in respect of the unit question after receipt of occupation certificate dated 07.06.2022 from the Department of Town and Country Planning. The receipt of occupation certificate from the competent Authority itself shows that the unit was in a habitable condition and fit for occupation. The complainant has failed to prove as to how the unit in question was uninhabitable at the time of offer of possession. Thus, the said offer of possession was a valid offer of possession and there was no impediment in the complainant having accepted the said offer of possession. With regard to the demands raised by the respondents along with said offer of possession, it is observed that the complainant could have accepted the said offer of possession and resided making payments of these demands and/ or else raised objections with the respondents. However, the

complainant should not have resisted in accepting the said offer of possession.

31. Now the only remaining contention between the parties is with regard to the area of the unit in question. It has been submitted by the complainant that the area of the unit as per the agreement was 1418 sq. ft whereas in the alleged offer of possession, the area of the unit was mentioned as 1571 sq. ft. However, as per the occupation certificate, the area of the unit is 1242.037 sq ft. Thus the respondents be directed to charge only for the actual area that is being given to the complainant. In rebuttal, it has been submitted by the learned counsel for respondent that the residential unit is sold on the basis of super area, and consequently, this is the area reflected in the floor buyer agreement and offer of possession. On the other hand, occupation certificate reflects the floor area ratio admeasured as per the Haryana Building Code 2017 which does not cover all area like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also. In the present case, the area of 1242.037 sq. ft. mentioned in the occupation certificate does not mean that there has been any change/reduction in the area of the floor, it is simply that in the occupation certificate, only the FAR is reflected. The super area of the floor in question is 1571 sq. ft. and there is no change/ reduction in the same.

32. With respect to the question of the final area of the unit which is chargeable from the complainant, it is noted that as per the builder buyer agreement

executed between the parties, the area of the floor was 1418 sq. ft. however, ultimately as per the occupation certificate dated 07.06.2022, the area of the floor comes to 1242.037 sq. ft. Authority observes that respondents are entitled to charge only for the area of the floor which is actually to be provided to the allottee at the time of handing over of possession. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code,2017 which clearly establishes that lift, mumty, balcony, parking , services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of the project. However, cost of construction of all such structures which is not included in FAR can be burdened upon total cost of the unit by the respondent but; cannot be charged independently making it a chargeable component of the unit. Hence, the plea of respondent deserves to be rejected and respondent is directed to re-calculate the price of the floor according to the final area of the unit i.e 1242.037 sq.ft

33. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 25 of this order, respondents should have delivered possession of the floor by 24.06.2012. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on

21.11.2022. Along with said offer of possession respondents 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 28 of this order. Said offer of possession was a valid offer of possession duly issued after receipt of occupation certificate on 07.06.2022. There was no impediment in the complainant having accepted 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 floor, the complainant is also entitled to receive interest from the respondents 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.

34. With regard to the quantum of delay interest, it is the contention of the respondents that the complainant is not entitled to seek delayed possession interest since the complainant is a subsequent allottee and was already aware that the construction of the project is delayed. As per facts, the rights qua the unit in question originated from the rights adorned by original allottee which were later transferred to the complainant when he stepped into the shoes of the original allottee on 14.05.2014. No fresh agreement was executed between the complainant and the respondent. At that time, the complainant had made

the purchase after verifying the status of the unit to their satisfaction and was thoroughly acquainted with the terms and conditions. Complainant was very well aware of the fact that the possession of the unit has been delayed and that the construction of the unit is not in accordance with the agreed timeline. There were clear apprehensions that the possession of the unit will be further delayed for an uncertain amount of time. The complainant was already mentally prepared to wait for some time in the future to get possession of the purchased unit unlike the original allottees.

35. The principal argument of the respondents is with regards to the rights of the subsequent allottee i.e the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. It is clear that the complainant allottee was aware of the fact delivery of possession of the unit has been delayed. Complainant entered into the picture only after the endorsement was acknowledged by the respondents on 14.05.2014. Though, the due date of possession in present case was 24.06.2012 but the present complainant did not suffer because of the delayed possession until after the endorsement i.e 14.05.2014. The subsequent allottee did not suffer any agony and harassment because of the delay till 14.05.2014 to become entitled to claim compensation from the due date of possession. Rather that rights are only bestowed upon the original allottee who themselves exited the project and forego said rights. It is

true that the subsequent allottee had stepped into the shoes of the original allottee but the rights of subsequent allottee are fact dependent.

36. The star point in present discussion is with regards to the question whether the subsequent purchaser is not entitled to similar relief as the original allottee, once he or she steps in place of the original allottee and can the subsequent allottee be denied the relief which the original allottee is entitled to lay claim on in case they had continued with the project. When the original allottee entered into an agreement with the respondent builder for purchase of a unit in the project, the delivery was promised to be made within a time frame. Execution of a real estate project is an arduous task. Timely delivery of possession of a real estate project is dependent on several factors. In the event of hindrance on account of even one of the factors, the whole of the project comes to a stand still. In turn the possession of the unit is delayed. An allottee who has invested in such an under construction project, understands these risk factors . However, in the event the prolongation of the project creates an economic repercussion upon such original allottees, and the allottee is not in a position to wait indefinitely, allottees are constrained to find purchasers to step into their shoes. That such purchasers take over the rights and obligations of the original allottee qua the unit in question. However, the relative equities with regard to the time frame in each case are different. That the subsequent purchaser is not bound by the fears of delay and uncertainty since the picture with regard to the development and subsequent handing over

of possession is clearer than at the time of booking of the unit or due date of possession. That a subsequent purchaser makes a purchase only after verifying the latest development of the project and the prospects of further development and willingly chooses to be a part of the project which has already been delayed being very well aware of the reasons thereof. This scenario is entirely different from the mindset of the original allottee who had booked the unit under the apprehension of timely delivery of possession and had to later suffer because of the delay caused in delivery of possession. The subsequent allottee did not have to suffer the period of delay unlike the original allottees who was stuck in the project because of having invested their money awaiting timely possession.

37. Nonetheless, in cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession, the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottees are waiting for the promised unit and surely they would be entitled to all reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption would not be justified. Furthermore, 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, the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. However, after the date of endorsement the subsequent allottee stepped into the shoe of original allottee w.r.t the unit and the possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest and same shall be applicable from the date he was acknowledged as allottee by the respondent promoter. Therefore, the Authority has relied upon the case cited by respondent titled as "**M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh**" in which the Hon'ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. In present complaint, the respondents endorsed the transfer of booking rights qua the unit in question in respect of the complainant on 14.05.2014i.e after the due date of possession i.e 24.06.2012. Thereafter, there was a delay of more than 10 years in delivery of possession of the booked unit. The construction of the project was completed by the respondents in the year 2022. Occupation certificate was received on 07.06.2022. Respondents issued an offer of possession to the complainant on 21.11.2022. At the time of purchase the complainant was aware that the construction of the project is being delayed beyond the due date of possession. However, even the purchaser agrees to purchase a unit with an apprehension that the possession

will not be delayed beyond a reasonable expectation, however, in present complaint, the possession has been delayed by more than 8 years from the date of endorsement i.e 14.05.2014 which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjeet Singh judgement the complainant will be entitled to delay interest for the delay caused in delivery of possession from the date of endorsement i.e 14.05.2014 till the date of offer of possession i.e 21.11.2022. As per Section 18 of 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"

38. Hence, Authority directs the 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.

39. 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 ₹)	Date of endorsement or date of payment whichever is later	Interest Accrued till date of offer of possession i.e 21.11.2022 (in ₹)
1.	1463610	14.05.2014	1354818
2.	17081	04.12.2016	11064
3.	368451	29.03.2016	266038

4.	382357	28.03.2017	234707
5.	407127	27.03.2018	205860
6.	267300	13.11.2018	116803
7.	266300	02.12.2019	85968
	Total principal amount= ₹31,72,226/-		Total = ₹ 22,75,258/-

40. 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.

G. DIRECTIONS OF THE AUTHORITY

41. 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 ₹ 22,75,258 to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

ii. The respondents shall issue a fresh 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 next 30 days of the fresh offer.

iii. Complainant will remain liable to pay balance consideration amount, if any, to the respondents at the time of offer of possession

iv. The respondents 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]