



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	62 of 2024
Date of filing.:	11.01.2024
First date of hearing.:	13.02.2024
Date of decision.:	14.10.2025

Harvinder Singh Rana s/o Kartar Singh Rana
R/o 26A, Sant Nagar, East of Kailash
New Delhi-110065

...COMPLAINANT

VERSUS

1.M/s BPTP Parkland Pride Limited
Regd Office: M-11, Middle Circus,
Connaught Circus, New Delhi-110001

2. BPTP Ltd.
Regd Office: OT 30, 3rd Floor, Next Door Parklands,
Sector 76, Parklands Haryana 121004

3. Mr. Kabul Chawla (Director)
Regd Office: 28 ECE HOUSE, 1st floor,
KG Marg, New Delhi, 110001

4. Mr. Sudhanshu Tripathi(Director)
Regd Office: 28 ECE HOUSE, 1st floor,
KG Marg, New Delhi, 110001

....RESPONDENTS

K. Atree

Complaint no.:	63 of 2024
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Mrs. Rajni Rana
R/o 9A/CD Block DDA Flats
Ground Floor, Hari Nagar,
New Delhi-110064

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....RESPONDENTS

Present: - Mr Sanyam Diwan, Counsel for the complainant
through VC. (in both complaints)
Mr. Tejeshwar Singh, Counsel for the respondent
through VC.(in both complaints)

Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Captioned complaints both dated 11.01.2024 have been filed by respective complainants 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.
2. Both the captioned complaints are being taken up together as they pertain to the same project of the respondent and facts and grievances involved are similar and being decided taking Complaint No. 62 of 2024 as the lead case.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of project, details of sale consideration, amount paid by the complainants, 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, Sector 75-89, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not	Not Registered



	registered	
5.	Details of unit.	Earlier allotted Unit no. L-56-SF, measuring 1418 sq. ft. Later shifted to PE-108-SF, measuring 1510 sq. ft.
6.	Date of allotment of unit (Unit PE-108- SF)	01.05.2013
7.	Date of floor buyer agreement	14.03.2014
8.	Possession Clause in BBA(clause 5.1)	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 courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer



		agreement or sanction of building plan, whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
9.	Due date of Possession	14.03.2016
10.	Total sale consideration	₹ 27,79,101/-
11.	Amount paid by complainant	₹ 27,19,234/-
12.	Offer of possession.	01.08.2024

Rathore

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT OF THE LEAD CASE

4. Facts of complaint are that the complainant had booked a unit in the project of the respondents namely "Park Elite Floors" situated at Parklands, Sector 77, Faridabad, Haryana in the year 2009 upon payment of ₹ 3,00,000/- as booking amount on 25.05.2009. Complainant was allotted unit no. L-56-SF measuring 1418 sq. ft. vide allotment letter dated 24.12.2009. The total sale consideration of the unit was fixed as ₹ 29,75,602/-.
5. Thereafter, a builder buyer agreement was executed between both the parties on 20.08.2010 qua the unit bearing no. L-56-SF. As per the agreement possession of the unit was to be delivered within a period of thirty (30) months from the date of execution of builder buyer agreement. Said period expired on 20.02.2013. Further, the respondents were allowed a period of 180 days for filing and pursuing grant of occupation certificate. However, instead of delivering possession of the said unit, the respondents vide letter dated 01.05.2013 apprised the complainant that for reasons beyond control, the respondents were unable to develop the said unit. Subsequently, in order to cover up the lacunae and cure the illegalities committed by the respondents, the complainant was forced to sign an addendum and affidavit, in case failing which the unit of the complainant would be cancelled and refund initiated at @



9%. Having no other option, the complainant agreed to the allotment of a new unit in respondents upcoming project at Parklands, Sector 77 Faridabad.

6. Consequently, vide re-allotment letter dated 01.05.2013, the complainant was allotted unit bearing no. PE-108-SF, Block PE, Parklands, Sector 77 Faridabad, admeasuring 1510 sq. ft. The basic sale price of the unit was fixed as ₹ 27,79,101/-. A fresh builder buyer agreement was executed between the parties qua the unit re-allotted unit bearing no. PE-108-SF on 14.03.2014. As per clause 5.1 of the agreement dated 14.03.2014, the possession of the unit was to be delivered within a period of 24 months from the date of execution of the builder buyer agreement or sanction of building plan whichever is later. Further, the respondents were allowed a period of 180 days for filing and pursuing grant of occupation certificate.
7. That as per the demand raised by the respondent, the complainant has already made a payment of ₹ 27,19,234/- in respect of the booked unit.
8. The respondent was supposed to deliver possession of the booked unit by 14.03.2016, however the respondents have miserably failed to complete construction of the project and deliver possession. Complainant repeatedly enquired about the same but the respondents were unable to provide clarity on the status of construction of the unit.
9. Hence, the complainant has filed the present complaint on following grounds:
 - a. Violation of section 4(c) of the RI:RA. As there is no clarity on the completion of the phases of the project. The project was



initiated in the year 2008/9. However, the project has not been completed nor the phases are being completed by the respondents.

- b. No external development. It is submitted that few of the allottees because of their constrain have started residing in the project. However, there is no complete basic facilities and amenities available in the project. Even the proper security is not available.
- c. Illegal and arbitrary club charge: The Respondents without having the facilities and going against the settled law has been charging Rs. 50,000.00/- as club charges.
- d. The Respondents have also increased the super area; however, the plot area has been decreased (from 300 sq Yards to 278 Sq Yards), hence, the same is also illegal and arbitrary.
- e. No complete internal development works. The proposed amenities and facilities which were mentioned in the brochure by the respondents are not available. The respondents have promised the following things in its brochure.
 - i. Terrace or lawn on every floor.
 - ii. Parks
 - iii. Recreation centers.
 - iv. Schools.



- v. Hospitals, club etc.
- vi. it is further submitted that the respondents have also promised to give the booked the unit as per the specification of the material which shall be used in the booked unit, the same is mentioned in the Annexure of the BBA.
- f. Violation of Haryana, development and regulation of urban areas act, 1975. That the respondents without having approvals and permissions from the concerned authorities started taking bookings of the units in the project, and therefore have committed offences punishable under Section 10 of the Haryana, development and regulation of Urban Areas Act, 1975, for the violation of Section 7 read with Section 3 of the Haryana, Development and Regulation of Urban Areas Act, 1975.
- g. Delay in delivery of the possession. That as per clause 5 the respondents was to offer possession within 30months i.e., on or before 14.09.2016, but the possession of the unit has not been offered to the Respondents up till now.
- h. Unilaterally and arbitrary increased in the super area. That the respondents illegally increased the super area by 92 Sq. ft.



without taking any permission or even without informing the complainant.

- i. Alteration in the sanction plan post allotment: the respondents has never shared the site plan, building, plan, service, plan, parking and circulation, plan, landscape, plan, layout, plan, zooming plan, and such other plans, which includes the structural designs, etc. And now even after allotment without taking permission from the allottees, the
- j. Respondent has arbitrarily and illegally changed sanction, plan, layout, plan, etc. It is submitted that as per section 4 (2) (d) RERA the promoters/Respondents are required to disclose/provide the sanction plan, layout, plan and specification of the project and the phases thereof. Till date despite several requests, Nothing has been provided by the respondents to the complainants. It is further submitted that as per section 4(2) (h) despondent is required to make complete disclosure of the numbers, types and carpet area of the apartment for sale in the project along with the area of exclusive balcony or verandah area and exclusive open terrace area, however, the same has also not been disclosed by the respondents to the complainants.



- k. As per section 4 (2)(1) (c) the respondents is also required to declare the time period within which he undertakes to complete the project and the phase is thereof, however, the same has not been declared by the respondents.
- l. Respondents is illegally charging for the areas which are not chargeable as per the prevailing laws.
- m. That the promoters have violated the conditions of the RERA Act, 2016 by not registering with the Real Estate Regulatory Authority and therefore, punishable under section 59 of the RERA Act.
- n. That the promoters by not taking permission of the complainants before altering the booking area of the flat has violated the RERA Act and therefore punishable under section 61 of the RERA Act.
- o. That as per section 18 and 19 of the RERA Act, in case of withdrawal by the allottee due to delay on the part of promoter, the complainant is entitled to refund of the amount paid by them with interest along with the compensation as determined under the Act.


Rathee

C. RELIEF SOUGHT

10. The complainant in present complaint seeks following relief:

- a. Direct the respondents to handover the possession of the booked unit immediately with the complete amenities and facilities which were offered by the respondents through its brochure while launching the project the same is mentioned in para 4 of the grounds.
- b. Direct the respondents to pay the delayed interest/compensation for not handing over the possession of the booked unit on time.
- c. Direct the respondents to pay compensation of ₹ 10 lacs for altering the booked area without seeking permission from the complainant.
- d. Direct the respondents not to charge the club charges and illegal and arbitrarily increased super area.
- e. Direct the respondents to pay a compensation of 4 lacs for violation of Section 12 and Section 19(4) of RERA. Direct the respondents to pay a compensation of Rs. 10 lacs for causing mental harassment and agony to the complainant.
- f. Direct the respondents to pay compensation of ₹ 10 lacs for causing mental harassment and agony to the complainant.
- g. Any other relief, order or direction as deemed necessary by RERA.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 12.02.2024 pleading therein:

11. That the respondent no. 1 is a mere confirming party to the agreement. The respondent no. 3 and 4 are officials of the respondent company. Neither the respondent no. 1, 3 and 4 are a necessary party nor a proper party to the present case and hence, its name should be deleted from the array of parties.
12. The complainant had approached the respondent no. 2(herein after respondent) for booking a residential unit in the project of the respondents namely 'Park Elite Floors' being developed at Faridabad. Consequently, vide allotment letter dated 24.12.2009, complainant was allotted unit bearing no. L-56-SF, Tower I, having super area 1418 sq ft. However, with the consent of the complainant, the complainant was re-allotted unit bearing no. PE-108-SF having super area of 1510 sq. ft vide allotment letter dated 01.05.2013.
13. A builder buyer agreement was executed between the parties in respect of the unit no. PE-108-SF in question on 14.03.2014. As per clause 5.1 of the agreement possession of the floor was to be delivered within a period of 24 months from the date of execution of the builder buyer agreement or sanction of building plan whichever is later along with a grace period of 180 days. At this stage, it is submitted that the benefit of grace period has to be given as has also been considered by the I.d. Tribunal, Chandigarh in the case titled as



Emaar MGF Land Ltd. vs Laddi Paramjit 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 respondent no. 2.

14. 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 were 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.

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

16. That the due date of possession is subject to date of sanctioning of building plans. The building plan was approved on 02.01.2024 and thus the due date for delivery of possession works out to 02.07.2026. That in light of the same, the due date of offer of possession has not yet passed

17. That the respondent no. 1, vide letter dated 17.08.2023, proposed the complainant alternate options. That due to the unforeseen circumstances, as



detailed above, the construction of the project was severely affected and hence the respondent No. 2, acting in its bonafide conduct, gave several options to the complainant for amicable settlement of the grievances of the complainant towards the unit. That the complainant was given options of refund along with 6% simple interest along with two other options to choose from those available options. It is pertinent to mention that the parties had been in the process of settlement talks. Copy of proposal of alternate options letter dated 17.08.2023 is annexed as ANNEXURE R6.

18. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the floor buyer agreement dated 14.03.2014, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.

19. During the course of proceedings, the respondents have filed written submissions dated 11.11.2024 submitting therein that the respondents after completion of construction had received occupation certificate for the unit in question on 18.06.2024. After receipt of occupation certificate, respondents had issued an offer of possession to the complainant on 01.08.2024. However, the complainant failed to take possession of the unit which is in contravention of



Section 19(10) RERA Act and Clause 5 of the agreement. It is further submitted that as per builder buyer agreement possession of the unit was to be delivered by 14.09.2016. An offer of possession was issued after receipt of occupation certificate. Admittedly there has been a delay in handing over of possession, and respondents are ready to pay the delay charges to complainant subject to consideration of two aspects. Firstly, that respondents is liable to pay delay charges from the deemed date of possession i.e. 14.09.2016 till offer of possession or till occupation for the unit was obtained by respondents whichever is later. In present case, offer of possession was made on 01.08.2024 and occupation was obtained on 18.06.2024. Respondents have placed reliance on judgments passed by Hon'ble Supreme Court in 'Wg. Cdr. Arifur Rehman Khan and Aleya Sultana and Ors Vs DLF Southern Homes Pvt Ltd and Ors.'; by Hon'ble Appellate Tribunal in 'Pioneer Urban Land and Infrastructure Limited Vs Mohinder Kumar Jain, Appeal No. 25 of 2021' and Hon'ble Authority in 'Ashok Kumar Sethi and ors Vs BPTP Ltd'. Secondly, as per Section 19(6) and 19(7) read with 2(z) of the RERA Act, the complainants are also bound to pay delay charges till date of offer of possession and to pay all demands raised in consonance to statement of account within 30 days. Therefore, complainant may also be held liable to pay delay interest for not taking possession within 2 months of offering the same. Respondents have further placed reliance upon judgements passed by Hon'ble Authority in



Complaint no. 79 of 2021 titled 'Asha Bhatt Vs BPTP Pvt Ltd.' and Complaint no. 149 of 2021 titled 'Neeraj Kumar Vs BPTP Ltd.'

20. During the course of arguments, learned counsel for the respondents reiterated the aforementioned submissions.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS

21. During hearing, learned counsel for the complainant submitted that the respondents in its submissions has submitted that the deemed date of possession is to be calculated from the date of sanction of building plans which have been approved on 02.01.2024, thus pushing the deemed date of possession to 02.01.2026. However, the respondents have failed to place on record any document stating the exact date of approval of building plans.

22. In rebuttal, Mr. Tejeshwar Singh, learned counsel for the respondents submitted that he is relinquishing his argument in respect of determining the deemed date of possession from the date of approval of building plans for the project in question. He further submitted the deemed date of possession is 24 months from the date of execution of the agreement dated 14.09.2014 along with a grace period of 180 days for pursuing grant of occupation certificate. Hence, said information with regard to approval of building plans is no longer relevant. Learned counsel for the respondents further submitted that the plot in question on which the unit of the complainant is situated has



received occupation certificate on 18.06.2024 and respondents has issued an offer of possession to the complainant on 01.08.2024 after receipt of occupation certificate. It is the complainant who has failed to accept the said offer of possession and make payment of the outstanding amount.

However, learned counsel for the complainant submitted that the said offer of possession has been issued during the pendency of the captioned complaint. Complainant does not agree with the demands raised vide said offer of possession.

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 ON OBJECTIONS OF THE RESPONDENTS

F.1 Objection regarding execution of floor buyer agreement prior to the coming into force of RERA Act, 2016.

One of the averments of respondents is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under



the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."



Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of floor buyer agreement is admitted by the respondents. Said agreement is binding upon the parties. As such, the respondents are under an obligation to hand over possession as stipulated in the agreement and in case, the respondents failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

F.II Objection raised by the respondents with regard to maintainability of complaint against Respondent no. 1, 3 and 4

It is the submission on behalf of the respondents that respondent no. 1, 3 and 4, i.e., are neither a necessary nor a proper party to the present



complaint and the complaint is not maintainable against them. In this regard it is observed that the respondent No. 1 is merely a confirming party to the floor buyer's agreement executed between the complainants and respondent No. 2 and has no independent contractual obligations, nor has any relief been sought against it by the complainants. In this regard it is observed that the submission of the respondents, regarding respondent No. 1 being an unnecessary party is wholly misconceived. The floor buyer agreement has been jointly executed between the complainants, respondent no. 1 and 2. As said agreement, respondent no. 1 and 2 as per their mutual agreement have agreed to develop/construct, sell, market, dal, negotiate and execute agreement, sale deed etc, with prospective purchasers (including present allottees/complainants) rates and terms and conditions to be determined in its sole discretion and to receive payments, issue receipts thereof in its own name. Meaning thereby that both parties are jointly and severally liable towards the present complainants. The entire contractual relationship from the booking to receipt of payment and subsequent delivery of possession exists between both the respondents and the complainants. Hence, it can rightly be observed that respondent No. 1 is a proper and necessary party to the present proceedings, and the objection to its inclusion is liable to be rejected. On the other hand, respondent no. 3 and 4 are officials of the respondent company. Complainant in its pleadings has failed to prove as to how these said officials are liable in the present



complaint. Therefore, it is observed that respondent no. 3 and 4 are not a party to the present complaint. Henceforth, the present complaint is being proceeded against respondent no. 1 and 2 (jointly referred to as respondents).

G. OBSERVATIONS OF THE AUTHORITY

24. As per facts and circumstances, complainant in this case had initially allotted unit bearing no. L-56-SF, measuring 1418 sq. ft. in the project being developed by the respondents namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 24.12.2009. However, after a gap of three years, the unit of the complainant was shifted from unit no. L-56-SF and allotted a different unit bearing no. PE-108-SF, measuring 1510 sq.ft vide re-allotment letter dated 01.05.2013. Thereafter, both parties executed a builder buyer agreement in respect of the unit bearing PE-108-SF on 14.03.2014 for a basic sale consideration of ₹ 27,79,101/- against which the complainant has paid a total amount of ₹ 27,19,234/- . It is the contention of the complainant that the respondents have failed to complete the project and thus delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking possession of the booked unit along with delay interest.
25. As per clause 5.1 of the builder buyer agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of



execution of builder buyer agreement. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. In this regard it is observed that the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the builder buyer agreement i.e immediately after completion of construction works within 24 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. 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 14.03.2016.

26. 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. Respondents have failed to adequately prove the extent to which



the construction of the project in question got affected. Furthermore, respondents have 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"



27. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 14.03.2016. However, respondents failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 01.08.2024. Said offer of possession was issued after receipt of occupation certificate on 18.06.2024. It is the submission of the respondents that the offer of possession was issued after completion of all development works and receipt of occupation certificate, thus the complainant should have accepted the said offer of possession. However, the complainant failed to do the same.

During the course of arguments, learned counsel for the complainant had submitted that the complainant had filed the captioned complaint on 11.01.2024 seeking possession of the unit in question along with delay interest since the respondents had failed to complete the construction of the project within stipulated time. Thereafter, during the pendency of complaint, the respondents had issued the alleged offer of possession dated 01.08.2024. However, the said offer of possession was unacceptable to the complainant since the complainant did not agree with the demands raised vide said offer of possession.

28. With regard to the contention of the complainant, the Authority has carefully examined the statement of account issued along with offer of possession dated 01.08.2024 and observes as follows:



- i. With regard to the cost escalation charges of ₹160,180/-, it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 14.03.2016. Respondents have issued an offer of possession to the complainant on 01.08.2024 after a gap of more than 8 years. Cost escalation charges, though a mentioned clause in the floor buyer agreement, are unjust at this stage since there has been a huge delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs during the stipulated period of construction of project, but in this case, the deemed date of delivery of possession had long passed and the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a 10-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondents. Therefore, demand raised by the respondents on account of cost escalation charges be set aside.
- ii. With regard to the demand raised by the respondents on account of club membership charges of ₹ 15,000/-, 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 respondents on 18.06.2024. 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 respondents 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.

- 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 14.03.2016 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 2.6 of the agreement reveals that the



complainant has agreed to pay the said charges. Therefore, the same are to be levied by the respondents and payable on the part of the complainant.

- iv. With regard to demands raised on account of Electricity connection charges and Electrification and STP charges it is observed that vide clause 2.6 sub-clause 'g','i' and 'j' of the buyer's agreement dated 14.03.2016 the complainant had agreed to pay these charges to the respondents. 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.
- v. With regard to demands raised on account of EDC/IDC charges, it is observed that these charges are in consonance with the terms of the agreement as per clause 2.6 and hence are payable on the part of the complainant.
- vi. With regard to 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 1510 sq. ft. however, ultimately as per the occupation certificate dated 18.06.2024, the area of the floor comes to 1181.40 sq. ft. Authority observes that respondents are entitled to charge only for the area of the unit 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 respondents but; cannot be charged independently making it a chargeable component of the unit. Hence, the respondent is directed to re-calculate the price of the floor according to the final area of the unit i.e 1181.4 sq.ft

29. 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 14.03.2016. 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 01.08.2024. 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 18.06.2024. 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. So, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 14.03.2016 till the date of valid offer of possession i.e 01.08.2024. 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 HIRERA 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”

30. Hence, Authority directs respondents to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from from the due date of possession till the date of a valid offer of possession i.e 01.08.2024.

31. 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 table below:



Complaint No. 62 of 2024

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 01.08.2024 (in ₹)
1.	2405643.12	14.03.2016	21,90,358/-
2.	17720	25.11.2016	14,786/-
3.	295871	24.04.2017	2,63,411/-
Total:	27,19,234.12/-		24,41,555/-

Complaint No. 63 of 2024

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 02.08.2024 (in ₹)
1.	1029640.50	24.08.2012	1335083
2.	81733.80	11.01.2013	102579
3.	2560	15.01.2013	3210
4.	360374.86	12.07.2013	432786
5.	360374.86	20.09.2013	425287
6.	360374.86	14.11.2013	419395
7.	25612	25.11.2016	21379
8.	25612	05.12.2016	21302
9.	313897	16.03.2018	217597
10.	41675	21.04.2018	28444



11.	500	12.05.2018	338
12.	41700	18.05.2018	28126
Total:	2644054.88/-		3035526/-

In captioned complaint no. 63 of 2024, the complainant has claimed that a builder agreement was executed between the parties for unit bearing No. L-38-Sf on 05.04.2010 and thereafter, the unit of the complainant was changed from L-38-SF to PE-121-SF and a fresh builder buyer agreement was executed between the parties on 31.10.2012. However, on perusal of record it is observed that the builder agreement placed on record by the complainant dated 05.04.2010 and 31.10.2012 are both unsigned. On the other hand, respondents have submitted that the complainant was initially allotted unit bearing no. L-38-Sf vide builder buyer agreement dated 24.08.2010. However, the unit of the complainant was later shifted from L-38-Sf to PE-121-SF vide re-allotment letter dated 31.10.2012. Respondents have placed on record a copy of properly signed and executed copy of builder buyer agreement dated 24.08.2010. Hence, the same is taken on record for the purpose of adjudication of complaint. Further the complainant in her complaint file has claimed to have paid an amount of ₹ 29,15,504/- to the respondents in lieu of booked unit. However, upon persual of record, it is observed that the complainant has annexed receipts only to the tune of ₹2644054.88/-. Hence, the total paid amount for the purpose of calculation of interest if being taken as ₹2644054.88/- only.



32. It is pertinent to mention that in the captioned complaint, complainant has 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 complainant 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 complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainant cannot be denied their 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 respondents.

33. The complainant is also seeking relief of deficiency in services as the promised amenities had not been developed at the site by the respondents. For this the complainant- 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. Also, the complainant is seeking



compensation for mental pain, agony, harassment and depression caused to the complainant and litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the aforementioned reliefs.

H. DIRECTIONS OF THE AUTHORITY

34. 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. In Complaint No. 62 of 2024, respondents are directed to pay upfront delay interest ₹ 24,41,555/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.



- ii. In Complaint No. 63 of 2024, respondents are directed to pay upfront delay interest ₹ 3035526/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.
- iii. 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 15 days of uploading of this order. Complainant shall accept the offer of possession within next 15 days of the fresh offer.
- iv. Complainant will remain liable to pay balance consideration amount, if any, to the respondents at the time of offer of possession
- v. 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]