HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1768 of 2023**
Date of filing.:	**24.08.2023**
First date of hearing.:	**27.09.2023**
Date of decision.:	**23.12.2025**

Mohit Kumar Mandowra S/o Sh. Kamal Kishore Mandowra
R/o H. No. 798, First Floor,
Housing Board Colony, Sector 21 D,
Faridabad 121012 ....COMPLAINANT

VERSUS

1. M/s BPTP Limited
2. M/s Countrywide Promoters Private Limited
Both having Regd Office: M-11, Middle Circus,
Connaught Circus, New Delhi-110001 ....RESPONDENTS

Present: - Mr. Vikas Chaudhary, Counsel for Complainant through VC.

Mr. Tejeshwar Singh, Counsel for the Respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, 82 to 89, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of the unit.	E-40-42-FF, measuring 1065 sq. ft.
6.	Date of builder buyer agreement(with original allottee)	30.06.2011

7.	Date of endorsement in favour of complainant/allottee	20.12.2014
8.	Date of builder buyer agreement(with complainant)	25.03.2015
8.	Possession clause in BBA (Clause 6.1 read with Clause 1.3)	Clause 6.1 The Seller/Confirming Party proposes to make offer possession of the Unit to the Purchaser(s) within the Commitment Period along with Grace Period "1.3 "Commitment Period" shall mean, subject to Force Majeure circumstances, interventions of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/or documentation, as prescribed/requested by Seller/Confirming Party, under this agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of all the installments of the Basic Sale Price and Other Charges as per the payment plan opted, the seller/confirming party shall offer the possession of the unit to the Purchaser(s) within a period of 36 (Thirty Six) months from the date of execution of this agreement."
9.	Due date of possession	25.03.2018
10.	Basic sale consideration	₹ 16,08,004/-
11.	Amount paid by complainant	₹ 25,26,599/-

12.	Offer of possession.	09.08.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that initially one Ms. Ritu Khanna had booked a unit in the project of the respondents namely "Park Elite Floors" situated at Sector 75 to 85, Faridabad, Haryana in the year 2011. A builder buyer agreement was executed between both the parties on 30.06.2011 and the original allottee was allotted unit bearing no. E40-42-FF, First Floor, measuring 1065 sq. ft in the said project. A copy of the agreement dated 30.06.2011 is annexed as Annexure C-1.

4. Thereafter, the original allottee sold the above mentioned unit to Mr. Brishbhan and Mrs. Murti Devi on 21.10.2014 and thereafter Mr. Brishbhan and Mrs. Murti Devi sold the unit to the present complainant on 20.12.2014 and the same was endorsed in the name of the complainant on 20.12.2014.

5. Thereafter, the respondents submitted a statement of account dated 14.01.2015 whereby it was acknowledged that a sum of ₹ 19,59,503.69/- has been received against the unit in question.

6. That although a valid and effective agreement was in existence between the original allottee and the respondents, however at the time of endorsement the respondents insisted for signing of a fresh agreement with changed conditions incorporated therein. Having no other option, the complainant entered into a fresh builder buyer agreement dated 25.03.2015 with the respondents in

respect of the unit in question. A copy of the agreement dated 25.03.2015 is attached as Annexure C-4.

7. As per clause 6.1 of the agreement, the respondents were liable to deliver possession of the booked unit within 36 months from the date of execution of the builder buyer agreement. Further, the respondents were allowed a period of 180 days for making an offer of possession of the unit. That the basic consideration of the unit was ₹ 16,08,004/- as stated in Clause 2 of the agreement and the complainant has paid ₹ 19,81,400/- to the respondents. The copies of the receipts are annexed as Annexure C-5 (Colly).

8. As per the agreement, possession of the unit should have been handed over by 23.03.2018, however, respondents failed to offer possession within stipulated time to the complainant. The complainant had visited the office of the respondents a number of time seeking possession of the booked unit, however, the respondents kept on delaying the same.

9. That finally on 09.08.2023, the respondent had sent an offer of possession qua the unit in question. However, same was issued without receipt of occupation certificate. Further, when complainant visited the site, he came to know that the construction works are incomplete.

10. Despite a lapse of more than six years from the due date of possession, the respondents are not in a position to deliver a valid possession of th unit. Hence, the complainant has filed the present complaint seeking possession of

the unit in question along with delayed possession interest for the delay caused in delivery of possession.

C. RELIEF SOUGHT

11. That the complainant seeks following relief and directions to the respondent:-

i. Direct the respondents to handover the physical possession of the unit E40-42-FF with the amenities as promised. The complainant be allowed a pre-inspection of the unit before signing of any undertaking.

ii. Direct the respondents to pay the delayed possession interest from the due date of possession till actual possession is handed over, as per prescribed rate of interest.

iii. Direct the respondents to refund the GST amount charged from him since the possession has been delayed by the respondents.

iv. That the VAT amount charged from the complainant should also be restricted.

v. Demand made by the respondents on account of club charges be set aside as there is no club in existence.

vi. That the amount charged on account of EEDC should also be restricted.

vii. That the signing of unnecessary clauses/Annexure attached with the offer of possession may kindly be set aside. The respondents be directed to issued fresh offer of possession.

12. During the course of arguments, learned counsel for the complainant submitted that the complainant in present complaint had stepped into the shoes of the subsequent allottees vide agreement to sell dated 21.10.2014 and the nomination was effected in the name of the complainant on 20.12.2014. At the time of purchase, the respondents did not allow any site visit and the complainant was only verbally assured that the construction is in progress and possession will soon be delivered. However, instead of delivering possession, the respondents used dominant position to execute a fresh agreement with the complainant which pushed further the deemed date of possession by another 3 years and also got signed an undertaking of waiving of his rights qua delayed possession interest. The terms of the said agreement were unilateral. Hence, the complainant is seeking possession of the unit in question with delay interest in terms of the original buyer's agreement.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 12.10.2023 pleading therein:

13. That Ms. Rita Khanna and Mr. Yash Khanna, original allottees, had expressed his interest and willingness to purchase a unit in the project of the respondent namely "Park Elite Floors" being developed at Sector 85, Faridabad vide application on 25.05.2009. Thereafter, the original allottees executed an agreement to sell to transfer their booking to Mr Brij Bhan and Ms Murti.

Consequently, the first subsequent allottees, were allotted unit bearing no, E40-42 FF vide allotment letter dated 24.12.2009.

14. Thereafter, a buyer's agreement was executed with the first subsequent allottees and executed an undertaking dated 04.11.2014.

15. Thereafter, the unit in question was transferred by the first subsequent purchaser to the complainant. After purchase, the complainant executed an affidavit dated 19.03.2015 qua the area of the unit bearing no. E40-42- FF being 1065 sq. ft. Then the parties executed a builder buyer agreement in respect of the booked unit dated 25.03.2015. Since a new contract was executed between the parties, the previous agreement with the previous purchaser is novated and the terms of agreement dated 25.03.2015 are binding on the parties.

16. That the subjective date for the offer of possession was to be taken from Clause 6.1 read with clauses 1.3 and 1.11 of the agreement i.e, as per the agreement the possession was proposed to be handed over within a period of 36 months from the date of execution of agreement along with a grace period. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022** that if the grace period is mentioned in the clause, the benefit of the same is allowed. Hence, as per the aforementioned clauses, the subjective due date comes out to be 25.09.2018.

17. That 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 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. The Hon'ble Supreme Court directed the framing of modern mineral concession rules. Reference in this regard may be taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said Project became scarce. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was

stayed on the Yamuna river bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (Two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made 7 and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

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

19. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by

the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan.

20. That despite innumerable hardships being faced by the respondent, the respondents have completed the construction of the project, the respondents had offered the possession of the unit to the complainant on 09.08.2023. That out of the total sale consideration of ₹ 25,24,912.28/- , the complainant has paid a sum of only ₹ 19,79,714.11/-. The complainant has miserably defaulted in making payment of the remaining amount. That the complainant willingly and voluntarily did not take possession of the unit or remit the balance sales consideration. A copy of the letter of offer of possession dated 01.08.2024 is annexed as Annexure R10.

21. 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 25.03.2015, 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.

22. That additionally, the respondent no. 2 is neither a necessary nor a proper party. No relief has been sought as against the respondent no. 2 who is a

mere licensee, hence the name of the respondent no. 2 should be deleted from the array of the parties.

23. During the course of arguments learned counsel for the respondent submitted that the complainant in this case is a subsequent allottee who had purchased the unit in question from open market vide agreement to sell dated 21.10.2014. Nomination was effected in the name of the complainant on 20.12.2014. The complainant had purchased the unit being fully aware that the possession timelines have been diluted and that the construction of the project was delayed. Thus the complainant and respondents got executed a fresh builder buyer's agreement dated 25.03.2015, as per which the due date to offer possession was within 36 months from the date of execution of the agreement along with 180 days of grace period. Despite facing severe force majeure conditions, the respondents completed construction of the project and issued an offer of possession to the complainant on 09.08.2023. The occupation certificate for the unit in question was received on 09.11.2023. The buyer's agreement dated 25.03.2015 constitutes the sole basis of subsisting relationship between the present complainant and the respondents, hence the complainant is liable for delay interest only from 25.09.2018 till the date of offer of possession/occupation certificate whichever is later. Learned counsel for the respondent further prayed for relaxation from paying interest for force majeure conditions and the 9 months period of COVID-19 when there was halt on construction activities.

Learned counsel for the respondent further submitted that respondent no. 2 is now being merged with respondent no.1. He further submitted that the complainant had enjoyed timely payment discounts at the time of making of payment which may not be included in the total paid amount. The actual amount paid by the complainant is only ₹ 24,78,690/-.

F. FINDINGS ON OBJECTIONS OF THE RESPONDENTS

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

One of the averments of respondent 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, respondent 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 respondent 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. 2,

It is the submission on behalf of the respondents that respondent no. 2 is neither a necessary nor a proper party to the present complaint and the complaint is not maintainable against it. In this regard it is observed that the submission of the respondents regarding respondent No. 2 being an unnecessary party is wholly misconceived. The builder buyer agreement has been jointly executed between the complainants, BPTP Ltd., and M/s BPTP Country Wide Promoters Pvt Ltd. As said agreement, the seller, being respondent no. 1, ' M/s BPTP Ltd' and the confirming party, being respondent no. 2, 'Countrywide Promoters Pvt. Ltd' as per their mutual agreement has authorised the seller 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. Respondent no. 2 has empowered the respondent no. 1 to act on its behalf, however, that does not mean that the respondent no. 1 has no liability towards the present complainant. The contract clearly bears the names of both respondents, thereby establishing their joint responsibility. 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. 2 is a proper and necessary party to the present proceedings, and the objection to its inclusion is liable to be rejected.

G OBSERVATIONS OF THE AUTHORITY

24. After hearing arguments advanced by both parties and pursuing documents placed on record, it is observed that a unit bearing no. E40-42 FF admeasuring 1065 sq. ft. had been booked in the project of the respondent namely "Park Elite Floors" by original allottee Ms. Ritu Khanna. The original allottee sold the booking rights qua the unit to one Mr. Brishbhan and Mrs. Murti Devi. A builder buyer agreement was executed between both the first subsequent allottee and the respondents on 30.06.2011.

Thereafter, they later transferred the booking rights qua the unit in question to the present complainant and the same was endorsed by the respondents on 20.12.2014. A fresh builder buyer agreement was executed between the complainant and the respondent on 25.03.2015. The total consideration of the unit was ₹ 25,24,912.28/- against which the complainant has paid an amount of ₹19,79,714.11/- till date. It is the submission of the complainant that the respondent has delayed delivery of possession of the unit beyond the stipulated time. Hence, the complainant has filed the present complaint primarily seeking possession of the unit in question along with delayed possession interest for the delay caused in delivery of possession.

25. As per clause 6.1 and 1.3 of the builder buyer agreement dated 25.03.2015, possession of the unit was to be delivered within a period of 36 months from the date of execution of the agreement i.e by 25.03.2018. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of the said 36 months for making an offer of possession of the unit. As per facts, respondents failed to complete the construction of the unit within stipulated time period and make an offer of possession to the complainant between 26.03.2018 to 25.09.2018 i.e the grace period. It is the respondent who has failed to fulfill its obligation. As per the settled principle no one can be allowed to take advantage of its own wrong.

Accordingly, this grace period of 180 days cannot be allowed to the promoter. Thus, deemed date of possession works out to 25.03.2018.

26. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondents have cited 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 that 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 22nd March 2020 i.e two years after the deemed date of possession, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs**

Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:

> "69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself*"

27. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 25.03.2018. However, respondents failed to complete construction of the project and deliver possession within stipulated time. The respondents had issued an offer of possession to the complainant on 09.08.2023. Complainant has admitted to having received the offer of possession but has further stated that he did not act upon the said offer as it was not a valid offer of possession since the construction works were incomplete at site and further the respondents had not received occupation certificate qua the booked unit. It is further the contention of the complainant that despite having paid more

than the basic sale consideration, respondent had raised illegal demands on account of GST charges, Club charges, EEDC 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. Thus for these forgoing reasons the complainant could have accepted the possession of the unit as on 09.08.2023. On the other hand, respondents have submitted that the demands have been raised in consonance with the buyers agreement and that the occupation certificate had been received on 09.11.2023 from the competent authority

28. With regard to the averment of the complainant that the construction works were incomplete at the site, it is observed that the complainant in its pleadings, written/oral, has failed to highlight the construction works which were not available at the site due to which the complainant could not have taken over possession of the unit. In the absence of proper documentation/ submissions this averment of the complainant cannot be accepted.

29. With regard to the contention of the complainant that the respondents have also illegally charged GST charges, Club charges, EEDC charges and VAT charges the Authority has carefully examined the statement of account issued along with offer of possession dated 09.08.2023 and observes as follows:

i. With regard to the demand raised by the respondents 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. 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, respondent will become entitled to recover it in future as and when a proper club will become operational at site.

ii. 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 25.03.2018 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. prior to deemed date of possession. Thus, the GST is not a fresh incidence of tax. Therefore, the complainant is liable to pay the same. Charges raised on account of VAT are payable to the Government. A bare perusal of clause 1.22 of the agreement

reveals that the complainant has agreed to pay the statutory dues. Therefore, the same are to be levied by the respondents and payable on the part of the 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.

30. Another grievance of the complainant is with regard to the period of delay for which delay interest should be admissible to him. It is the contention of the complainant that the delay interest should be payable to him as per the terms of builder buyer agreement executed with the erstwhile allottee.

As per facts, the first subsequent purchaser had executed a builder buyer agreement with the respondents in respect of the unit in question on 30.06.2011. Thereafter, the first subsequent purchaser had transferred the rights qua the unit to the present complainant which was endorsed by the respondents on 20.12.2014. After the endorsement, the complainant and the respondents had executed a fresh builder buyer agreement qua the unit on 25.03.2015. It is averment of the complainant that the execution of the fresh buyers agreement had been insisted upon by the respondents and the complainant had to acquiesce to the same. However, the complainant had ready remedy of law available at the time and could have availed the same

in case any grievance had arrived. The complainant had purchased the unit from open market and after making due diligence, thereafter the complainant had executed a fresh builder buyer agreement with the respondents in respect of the booked unit thus, the earlier executed agreement dated 30.06.2011 got novated. Now the terms of agreement between the parties i.e the complainant and the respondent are based upon the builder buyer agreement dated 25.03.2015 and thus the complainant is entitled to receive delay interest in accordance with the terms of the said agreement.

31. As per facts, possession of the unit should have been delivered to the complainant on 25.03.2018. However, respondents failed to deliver possession within stipulated time. Ultimately an offer of possession was issued to the complainant on 09.08.2023, however, the same was without receipt of occupation certificate. It is the submission of the respondents that the occupation certificate had been received on 09.11.2023. It is pertinent to note that a copy of the occupation certificate has not been placed on record by the respondents. Regardless, subsequent to obtaining occupation certificate the respondents had failed to communicate the receipt of occupation certificate to the compliant. The complainant could not have offhandedly known with regard to the receipt of occupation certificate. The respondents were duty bound to apprise the complainant with regard to the

receipt of occupation certificate. Till date, respondents have failed to issue a valid offer of possession to the complainant in respect of the unit in question after obtaining occupation certificate.

32. Admittedly, there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked unit, the complainant is also entitled to receive interest from the 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 25.03.2018 till a valid offer of possession is issued to the complainant.. The definition of term interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof*

and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

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

> ***"Rule 15:*** *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

33. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from from the due date of possession till the date of a valid offer of possession.

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

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till the date of order i.e 23.12.2025 (in Rs.)
1.	1981400	25.03.2018	1659751
2.	545199	10.01.2024	115182
Total:	Rs. 25,26,599/-		Rs. 17,74,933/-
Monthly Interest	Rs. 22,428/-		

During proceedings, learned counsel for the complainant had claimed that the total paid amount is ₹ 25,79,499/-|. On hearing dated 18.11.2025 it was observed that the complainant has merely attached a copy of two cheques dated 09.09.2023 for an amount of 5,45,199/- and ₹ 52,900/- without proof of payment. Accordingly, the complainant was directed to file proof of debit of said amount in favour of answering the respondent. The complainant submitted vide application 16.09.2025 dated a copy of statement of bank account of the complainant, as per which an amount of 5,45,199/- has been paid to the respondent through RTGS on dated 10.01.2024. However,no proof of payment had been attached by the complainant for the claimed amount of ₹ 52,900/-. Today, learned counsel for the complainant submitted that he is not pressing upon the amount of ₹ 52,900/-. Therefore, the total

paid amount for the purpose of calculation of interest is being taken as ₹ 25,26,599/- only.

35. It is pertinent to mention that in the captioned complaint, complainant has received timely payment discount from the respondent as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the 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 complainants 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 has been provided on the entire amount for which the receipts have been issued by the respondent.

F. DIRECTIONS OF THE AUTHORITY

36. 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 Rs. 17,74,933/- (till date of order i.e 23.12.2025) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ Rs. 22,428/- till a valid offer of possession is issued to the complainant.

ii. The respondents shall issue a valid offer of possession along with statement of account to the complainant incorporating therein the principles laid down in this order within 15 days of uploading of this order.

iii. Complainant shall make payment of balance sale consideration, if any, and accept the physical possession of the unit within next 15 days.

iv. The respondents shall not charge anything from the complainants 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.

.....
DR. GEETA RATHEE SINGH
[MEMBER]