



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1116 of 2023
Date of filing.:	23.05.2023
Date of first hearing.:	09.08.2023
Date of decision.:	19.02.2026

Nitin Gupta W/o Sh. Suresh Chand Gupta

R/o GH-4/292, Meera Apartments,

Paschim Vihar, New Delhi-110063.

Also at GH- 4/99, Meera Apartments,

Paschim Vihar, West Delhi, Delhi- 110063

.....COMPLAINANT

VERSUS

1.M/S BPTP Limited

28, ICE House, 1st Floor,

KG Marg, New Delhi-110001

Also at OT 14, 3rd Floor,

Next Door Parklands, Sector-76,

Faridabad- 121004.

2. M/S Countrywide Promoters Private Limited

M-11, Middle Circle, Connaught Circus,

New Delhi- 110001

.....RESPONDENTS

Complaint no.:	1458 of 2023
Date of filing.:	07.07.2023

u

Date of first hearing.:	10.08.2023
Date of decision.:	19.02.2026

Nidhi Khullar W/o Sh. Ashwani Khullar
R/o 284, Sector-16,
Faridabad, Haryana-121002.

.....COMPLAINANT

VERSUS

1.M/S BPTP Limited
28, ECE House, 1st Floor,
KG Marg, New Delhi-110001
Also at OI 14, 3rd Floor,
Next Door Parklands, Sector-76,
Faridabad- 121004.

2. M/S BPTP Parklands Pride Limited
Earlier known as New Age Town Planners Pvt Ltd
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001

....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Present: - Mr. Arjun Kundra, Counsel for complainants through VC in both cases.

Mr. Tejeshwar Singh, Counsel for the respondents through VC in both cases.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as they involve similar issues and pertain to the same project-“Park Elite Floors”. This final order is being passed by taking complaint no. 1116/2023 titled as “Nitin Gupta vs BPTP Ltd & Anr.” as the lead case.
2. 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

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

S.No.	Particulars	Details	Details
1.	Name of the project.	Park Elite Floors, Sector 75-89, Faridabad.	Park Elite Floors, Sector 75-89, Faridabad

2.	Nature of the project.	Residential	Residential
3.	RERA Registered/not registered	Not Registered	Not Registered
4.	Details of unit.	F-40-42, 2 nd Floor, 876 sq.ft.	PE-147-SF, 1510 sq. ft.
5.	Date of Allotment letter	24.12.2009	06.10.2011
6.	Date of builder buyer agreement	30.06.2011	15.03.2012
7.	Due date of possession(24 months)	30.06.2013	15.03.2014
8.	Possession clause in BBA	<p>Clause 4.1</p> <p><i>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp</i></p>	<p>Clause 5.1</p> <p><i>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp</i></p>

		<p><i>Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of the Floor Buyer's Agreement OR on completion of payment of 35% of the Basic Sale Price along with 20% of EDC and IDC by the Purchaser(s), which ever 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 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take</i></p>	<p><i>Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of the floor buyers agreement. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in 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</i></p>
--	--	--	---

		<i>the possession of the said Floor within 30 days thereof, the Purchasers) 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).</i>	<i>and the said Floor shall remain at the risk and cost of the Purchaser(s).</i>
9.	Basic sale consideration	₹ 16,08,004/-	₹ 27,79,095/-
10.	Amount paid by complainant	₹ 19,52,537.99/-	₹ 27,71,867.41/-
11.	Offer of possession	04.12.2023	19.06.2023
12.	Occupation Certificate	09.11.2023	18.08.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. Facts of the complaint are that the complainant applied for allotment of an independent residential floor in the project namely "Park Elite Floors", situated at Parklands, Faridabad, developed by the respondents, and paid the booking amount as demanded. The complainant has averred that despite receipt of the booking amount, the respondents did not immediately allot a specific unit and instead continued to raise monetary demands. It is stated that a substantial amount exceeding ₹5 lakhs was collected prior to execution of the Buyer's Agreement.

5. That the complainant was allotted Unit No. 1-40-42, 2nd Floor, measuring 876 sq. ft., in the aforesaid project. The basic sale consideration as per the Floor Buyer's Agreement was ₹15,11,524/- (after adjustment of discount). A copy of the allotment letter dated 24.12.2009 is annexed as Annexure C-1.
6. That the Floor Buyer's Agreement was executed on 30.06.2011, i.e., approximately one year and six months after allotment. The complainant alleges that the agreement was presented in a non-negotiable format and that no alteration/ addition/ amendment modifications were permitted. It is contended that the complainant being left with no other option signed on the dotted lines. A copy of the agreement dated 30.06.2011 is annexed as Annexure C-2.
7. The complainant has referred to Clauses 4.3 and 6.1 of the FBA, contending that while the respondents reserved the right to charge interest @18% per annum for delayed payments by the allottee, the compensation for delay in handing over possession was limited to ₹5/- per sq. ft. per month, which according to the complainant is arbitrary and one-sided.
8. That as per clause 4.1 of the Agreement, possession of the unit was proposed to be delivered within 24 months from the date of execution of the agreement, with an additional grace period of 6 months for applying

- and obtaining necessary approvals. Accordingly, possession was allegedly due by 30.06.2013.
9. That complainant has paid an amount of ₹19,52,537.99/- towards the unit. Further, despite making timely payments, the respondents failed to complete construction and deliver possession within the stipulated period. It is contended that till date possession has not been handed over. Additionally, the complainant never defaulted in payment of any installment and even availed timely payment rebate wherever applicable. Copies of the statement of account dated 18.10.2022 and payment receipts have been annexed as Annexure C-3.
10. That the complainant had availed a housing loan from Punjab National Bank for the said unit and executed a Tripartite Agreement dated 06.09.2011. It is stated that despite non-delivery of possession, he continues to make payments for the loan and pay EMIs. Copies of the loan documents and emails exchanged with the respondents have been annexed as Annexures C-5 and C-6 respectively.
11. That from the date of booking till filing of the complaint, the respondents never informed the complainant about any force majeure circumstances which could justify the delay. The complainant alleges that the delay is solely attributable to the respondents and amounts to deficiency in service and unfair trade practice.



12. That the respondents have indulged in unfair trade practices by raising installment demands without achieving the requisite construction milestones, delaying the project despite having collected substantial sale consideration, incorporating unilateral and arbitrary clauses in the Agreement, and allegedly increasing the basic sale price while demanding additional charges such as VAT, GST, interest, club charges and other charges.
13. That the complainant has approached this Authority requesting for a direction to the respondents to hand over peaceful and legal possession of the unit complete in all respects with promised amenities along with delay interest at the prescribed rate from 30.06.2013 till actual delivery of possession and other reliefs. Thus, the present complaint.

C. RELIEF SOUGHT

14. That the complainant seeks following relief and directions to the respondent:-
- i. Direct the Respondents to deliver Immediate Possession of the floor of the complainant i.e. E40-42, 2nd Floor, BPTP Park Elite Floors, Parklands, Sec 75 to 89, Faridabad, Haryana, admeasuring 876 sq. ft. after due completion and receipt of occupancy & completion certificate(s) along with

all the promised amenities and facilities and to the satisfaction of the complainant; and

- ii. Direct the respondents to pay prescribed rate of interest as per the act, on the amount already paid by the complainant from the promised date of possession/delivery i.e., 30th June 2013 till the actual physical and legal delivery of possession and execution of conveyance/sale deed; and
- iii. Pass an order restraining the respondents from charging any amount from the Complainant which do not form part of the Floor Buyer's Agreement dated 30th June 2011 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, unilateral increase in area of unit (from 876 sq ft. to 1,062 sq ft.), unilateral increase in basic sale price of the unit (from Rs. 15,11,524/- to Rs. 19,62,572.93/-), delay interest/penalty charges, GST charges, VAT charges, Club membership charge, illegal maintenance charges, levy of holding charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant;
- iv. And to further quash/set aside & return/adjust alongwith 18% interest, the alleged illegal Interest Payable imposed on

the complainant by the Respondents of Rs. 6,963.21/- & Rs. 15,128/- ;

- v. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 29.01.2024 pleading therein:

15. That present complaint pertains to an independent floor bearing no. E-40-42-SF admeasuring 1062 sq. ft. super area in the real estate Project "Park Elite Floors" being developed by the Respondent No. 1. The Respondent no. 1 is a Developer and Respondent No. 2 is the Licensee/Confirming party to the Agreement. Neither the Respondent No. 2 is a necessary party nor any relief has been sought from it and hence, its name should be deleted from the array of parties.

16. That the complainant and Mr. Deepak Gupta executed booking form for purchase of unit in project in question. Copy of booking form is annexed as Annexure R-1. Thereafter, allotment letter for unit no. E-40-42-SF admeasuring 1062 sq. ft. was issued in name of customers. Copy of allotment letter is annexed as Annexure R-2.



17. That the parties mutually and willingly entered into floor buyer agreement on 30.06.2011. The unit was originally booked by Mr. Nitin Gupta and Mr. Deepak Gupta however the then allottees requested for deletion of name of Mr. Deepak Gupta vide letter dated 20.10.2022. Therefore, the unit now stands solely in the name of Mr. Nitin Gupta. A copy of the Floor Buyer's Agreement dated 30.06.2011 is annexed as Annexure-R3.
18. That it was agreed between the parties that the area of the unit is tentative and subject to change, as also agreed under the Clause 1.15 of FBA.
19. As per FBA, the respondent proposes to handover the possession of the unit within a period of 24 months from the date of execution of the agreement or on completion of payment of 35% of the basic sale price alongwith 20% of EDC and IDC, whichever is later alongwith grace period of 180 days. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the I.d. 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, the due date comes out to 19.02.2014.
20. Aforesaid 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 That the construction of the unit was deeply affected by such circumstances, the benefit of which is bound to be given to the respondents in accordance with clauses 4.5 and 13 of the flat buyer agreement.

21. 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) were 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 respondents no. 1 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. Thus, on account of several orders, directions passed by the various authorities/forum hindered the development of project. Ban by NGT vide order dated 19.07.2016 for 30 days, Ban by Environment Pollution Authority vide order dated 07.11.2017 and 01.11.2019 for 90 days and 4 days respectively and Ban by Hon'ble Supreme Court vide order dated 04.11.2019 for 102 days.

22. That the aforementioned circumstances are in addition to the partial ban on construction. Additionally, Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-1(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet

again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.

23. That from the facts indicated above and documents appended, it is comprehensively established that a period of 350 days was consumed on account of circumstances beyond the power and control of the respondents, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above.

24. That in addition to the above, the construction was also affected by the act of non- receipt of timely payment against the unit. That timely payments of instalments is the essence of the agreement, accordingly, the respondents raised demands upon reaching respective milestones but the complainant unlawfully and malafidely failed in making the complete

payments. Copies of Demands Letters, payment receipt and reminders are annexed as Annexure R-6(Colly).

25. That despite there being a number of defaulters in the project, including the complainants, the respondent no. 1 had to infuse funds into the project and have diligently developed the project in question. It must be noted that despite the default caused, the respondents applied for Occupation Certificate on 04.08.2023 and same is pending before concerned Authority for its approval. Application for grant of Occupation Certificate dated 04.08.2023 is annexed as Annexure R-7.

26. That the complainant had made all the payments without any protest as per the agreed terms of the FBA. Complainant has wrongly challenged the payment of dues with respect to the enhanced charges, Cost escalation charges, increase in area, GST, VAT, Club membership, Maintenance charges, holding charges. However, payments in regard to the same were mutually and voluntarily agreed between the complainant.

27. That the Occupation Certificate for the unit in question was obtained on 09.11.2023 and possession was offered to the complainant on 04.12.2023. Copy of occupation certificate is annexed as Annexure R-8 and copy of offer of possession is annexed as Annexure R-9.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS.



28. L.d. counsel for complainant is pressing upon relief of possession along with payment of delay interest. He referred to builder buyer agreement for unit no. E-40-42-SF which was executed between the parties on 30.06.2011 and in terms of the same, possession was supposed to be delivered upto 30.06.2013. However, respondent has offered the possession on 04.12.2023 (during pendency of complaint) but same is accompanied with illegal demands/charges on account of cost escalation, increase in area, club membership, GST and VAT. He requested that issue of these charges be decided alongwith claim of possession and delay interest.
29. In rebuttal, learned counsel for the respondents submitted that complainant is entitled to claim delay interest, only upto date of valid offer of possession, i.e. 04.12.2023 that too subject to force majeure conditions explained in written statement. He further submitted that the unit of the complainant was offered to complainant on 04.12.2023 after receipt of occupation certificate on 09.11.2023. It is the complainant who has failed to accept the said offer of possession and make payment of the outstanding amount till date. In respect of impugned demands/charges, he argued that all demands/charges were raised in terms of agreement executed between the parties.
30. Further, he argued that complainant nowhere in its pleadings as well as in relief sought has mentioned anything related to difference of area for

which occupation certificate has been provided. In support, he read all the issues to be decided along with relief sought at the time of hearing. In respect of difference in area of unit allotted in agreement/mentioned in offer of possession and mentioned in occupation certificate, he referred to application filed in registry on 14.01.2026 stating that final super area of the unit stands as 1062 sq. ft. whereas the FAR area of the residential floor is 865.795 sq. ft. (excluding mummy area mentioned in the OC). The residential floor has been sold on the basis of super area and consequently this is the area reflected in the flat buyer agreement and the offer of possession. Complainant herein attempts to compare the FAR and the super area which cannot be practically done as the Super area is inclusive of the FAR + area of balcony/veranda+ proportionate common areas, while the occupation certificate has been attained for FAR only. Further, he referred to clause 1.10 of agreement for the definition of 'covered area' and clause 1.33 for definition of 'super area'. Thereafter, he stated that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout

State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016. Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

31. It has been submitted that the provision of Occupation Certificate is enshrined in Clause 4.10 of Chapter IV of the Haryana Building Code, 2017 and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he submitted that perusal of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code, 2017, in accordance with several provisions. So, claim of complainant is misguided and erroneous. Further he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainant willfully, without consent accepted each and every terms of agreement. Now, at this stage he cannot preclude himself from abiding by the terms of agreement. The intent and purpose for which agreement was executed has to be given effect in case complainant does

not want to come out of said agreement. He stated that the complainant has wrongly challenged the payment of dues with respect to the GST, VAT, club membership, cost escalation, holding charges and maintenance charges. Payments in regard to the same were mutually and voluntarily agreed between the complainant in different clauses of agreement.

G. ISSUES FOR ADJUDICATION

32. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

If Yes, the quantum thereof.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.1 Objection regarding impleadment of respondent no. 2 as party to complaint.

Respondent no. 1 in its written reply has stated that present complaint pertains to a unit bearing no. E-40-42-SF, admeasuring 876 sq. ft. in the real estate Project "Park Elite Floor" being developed by the Respondent No. 1. The Respondent No. 2 is merely a confirming party to the agreement. Moreover, no specific relief has been sought from respondent no. 2. Hence, its name should be deleted from the array of parties.



Perusal of facts and submissions reveals that complainant has paid all amounts and carried out transactions with respondent no. 1 only. However, in builder buyer agreement the obligation of delivering possession to complainant was imposed upon both the respondents, i.e. Seller (BPTP) and Confirming Party (Countrywide promoters) vide clause 4.1 of builder buyer agreement which is as follows:-

Clause 4.1 to agreement

Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of the floor buyers agreement OR on completion of payment of 35% of the Basic sale price along with 20% EDC and IDC by the Purchaser 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 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in 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).



Keeping in view the foresaid clause, the request of respondent deleting name of respondent no. 2 is rejected.

F.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case is 30.06.2013 as claimed by complainant in its pleadings. The claim of the respondent regarding exclusion of delay due to *force majeure* is now being examined. The respondent has claimed that extraordinary conditions caused the delay in construction i.e Bans by NGT order, Covid outbreak etc. Details of said periods is mentioned in the table below:-

Sr. No.	Details of Ban on Construction	Duration/Time Period
1.	Order dated 19.07.2016 passed by NGT	30 days
2.	Order dated 07.11.2017 passed by Environment Pollution (Prevention and Control) Authority	90 days
3.	Order dated 01.11.2019 passed by Environment Pollution (Prevention and Control) Authority	4 days
4.	Order dated 04.11.2019 passed by Hon'ble Supreme Court in M.C.Mehta vs Union of India	102 days
5.	Nationwide lockdown in order to curb COVID-19 w.e.f 25.03.2020 to 24.09.2020 and second wave of COVID-19 w.e.f 12.04.2021 to 24.07.2021	184 +103 days 287 days
Total 513 days		

Respondent has claimed time period of 226 days (30+90+4+102 days) as force majeure on account of ban imposed by various authorities illustrated above in table. The onus squarely lies with the respondent to explain how each of the above mentioned orders of authorities (except Covid) lies within the definition of *force majeure*. Further onus also lies upon the respondent to explain how each order directly affected its construction activities. It is the stand of respondent that force majeure conditions given above i.e Prohibitions by NGT in year 2017 and 2019, COVID-19 Pandemic etc affected the project completion.

Force majeure is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the



event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance.”

In India, it is often referred to as an “act of God”. Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term “Force Majeure” is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term “impossible” while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, “impossibility” refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of *Alopi Parshad and Sons Ltd vs Union of India*, AIR 1960 SC 588 and the landmark *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors* (2017) – 2017 3 AWC 2692 SC, the Supreme Court of India has categorically *stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.*

Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that *“a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”* It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. The Supreme Court in Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- Force majeure events must be unforeseeable by both parties;
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- *Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.*

In the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted for the period of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. However, with respect to other events, the respondent has failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all. Mere pleading of force majeure conditions without fulfilling its obligations, cannot be allowed as discussed above.

Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid- for 9 months, i.e. 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021, Covid-19, however, did not in any way enhance the date of handing of possession which is 09.06.2012 as mentioned by the Complainant. Nevertheless, Covid caused subsequent

delay in completion. Therefore, a time period of 9 months is to be excluded from any delay interest calculation.

F.III Objection raised by the complainant in respect of difference in area provided in offer of possession dated 04.12.2023 and occupation certificate dated 09.11.2023

Complainant's submissions is that the respondent is in receipt of occupation certificate which is for area 804.30 sq ft, whereas area of the unit as provided in offer of possession is 1062 sq. ft. It has been requested that respondent be directed to charge only for the area approved in occupation certificate, i.e. 804.30 sq. ft. The respondent has argued that neither in pleadings nor in relief sought, there is any mention of such plea. Therefore, any relief beyond pleadings cannot be awarded to complainant. Further, Id. counsel for respondent submitted that grant of occupation certificate is a technical process being followed in consonance with provisions of Haryana Building Code and does not cover all areas like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also.

Whereas, in principle there may be some merit in the argument of the respondent regarding pleadings, as above, however, the facts of each case need to be examined to come to a conclusion.

In the present case, the extra demand based on difference in area was raised by the respondent after the OC was received and the offer of

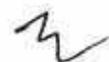


possession was made. Therefore, the offer of possession itself created an extra demand. *The Authority has to examine the Offer of Possession in totality in order to provide substantial justice.* In respect of the issue of difference in area as provided in offer of possession dated 04.12.2023, i.e. 1062 sq. ft and occupation certificate dated 09.11.2023, i.e. 804.30 sq. ft., Authority observes that respondent is entitled to charge only for the area of the unit which is actually 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 establish that lift, mummy, balcony, parking , services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of project. However, while the cost of construction of all such structures which are not included in FAR may be burdened upon total cost of the unit; but cannot be charged independently; making it a chargeable component of unit. The offer of possession itself mentioned excessive area, not saleable as per law.

This, therefore, is not a question of a relief claimed or pleadings made rather one of determining the correctness of the offer of possession. Hence, the respondent is directed to re-calculate the price of area of unit, based on the unit area provided in occupation certificate i.e. 804.30 sq. ft.



33. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. E-40-42-FF, admeasuring 876 sq. ft (now area of unit as provided in offer of possession is 1062 sq. ft which stands revised to 804.30 sq. ft) had been allotted to complainant in the project of the respondent namely "Park Elite Floors" situated in Parklands, Faridabad, Haryana vide allotment letter dated 24.12.2009. An amount of Rs 19,52,537/- has been paid by the complainant against the basic sale consideration of Rs 16,08,004/-.
34. As per clause 4.1 of the agreement dated 30.06.2011, the possession of the unit should have been delivered within a period of (24) months from the date of buyer agreement or on completion of payment of 35% of BSP along with 20% IDC and IDC by the purchaser whichever is later. Since date of completion of payment of 35% of BSP along with 20% IDC and IDC by the complainant has not been disclosed by the respondent no. 1, therefore, taking 24 months from date of agreement, the deemed date of possession would be 30.06.2013.
35. Authority observes that after a lapse of 10 years, respondent has offered possession of unit on 04.12.2023 along with additional demand of Rs 7,13,111/- (inclusive of stamp duty charges of Rs 1,77,000/-). Complainant has challenged the illegal demands raised along with said offer of possession. Details of such objections raised by complainant are incorporated in para 13(iii) of this order. In this regard, it is observed that



the complainant had opted for a construction linked plan and had paid more than basic sale price in the year 2012 itself. Since the delay caused is attributed to the respondent, it cannot burden the complainant with the charges/taxes etc. which were not applicable at the time of deemed date of possession. Further, objection to each demand raised by complainant is dealt with as below:-

- a. Firstly, with regard to the **increase in area from 876 sq. ft to 1062 sq. ft.**, Authority is of the view that respondent has received occupation certificate for the unit in question which is for an area measuring 804.30 sq. ft. As discussed in aforesaid paragraphs, the respondent shall charge from complainant only for the final area 804.30 sq. ft. as per OC.
- b. Secondly, with regard to the **cost escalation charges of Rs 53,725.08/-**, it is observed that the respondent issued a letter offering possession on 04.12.2023. In the said offer, the respondent also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Courts have consistently ruled that developers cannot impose additional financial burdens on homebuyers for delays caused by the developers themselves. Therefore, demand raised by the respondents on account of cost escalation charges are hereby set aside.



- c. Thirdly, with regard to the demand raised by the respondent on account of **club charges of Rs 50,000**, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational as per the sanctioned plans. In this case, it is essential to note that the **Occupancy Certificate (OC)** for the unit has been obtained by the respondent on 09.11.2023. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. L.d. counsel for complainant has explicitly stated at the time of arguments that the proposed club has not come into existence, with only a temporary club operational, if at all. 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. This demand raised by the respondent on account of club charges is also set aside. However, respondent will become entitled to recover it as per BBA in future as and when proper club as sanctioned will become operational at site.
- d. Fourthly, with regard to the demand raised by the respondent on account of **GST of Rs 65,708/-**, Authority is of the view that GST came into force on 01.07.2017, i.e. post deemed date of possession. Therefore, the complainant is not liable to pay GST charges.
- e. Lastly, respondent has charged a value added tax (VAT) of ₹19,605/- from the complainant, with regard to the same, Authority is of the

view that VAT charged by the respondent is a government tax, therefore, the complainant is liable to pay it. As per clause 1.5 of FBA, complainant is obligated to pay VAT to the respondent.

36. Now, issue which remains to be adjudicated is delay interest. Respondent had offered possession of unit on 04.12.2023 after receipt of occupation certificate dated 09.11.2023. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has made valid offer of possession to the complainant on 04.12.2023. Keeping in view all these facts and law, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession, i.e., 30.06.2013 up to the date on which a valid offer is sent to him after receipt of occupation certificate, i.e., 04.12.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. However, interest shall not be charged for the period of 9 months as discussed in para F.II that covers force majeure conditions.
37. In respect of relief clause (iii) pertaining to quashing/set aside and return/adjust alongwith 18% interest, the alleged illegal interest payable imposed on the complainant by the respondents of Rs 6963.21/- and Rs 15,128/-. It is pertinent to mention here that documentary evidence

explaining the delay in making each/respective payments is attached as page no. 94-96 of complaint. It is the stand of complainant that respondent had charged interest @18% which is clearly reflected in statement dated 18.06.2012 and 31.05.2014. Complainant has not denied the delay in making payments. Issue herein is that respondent had charged the interest at a higher rate which should have been at the rate prescribed under RERA Act,2016. Hence, respondents are directed to re-calculate the interest amount at the rate of 10.80% , i.e. SBI MCLR +2%. It is not specified that whether payment of said interest has been made or not. So, parties are directed to make adjustment of interest charges in the final statement of accounts.

38. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

39. 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;

40. Rule 15 of IRRERA 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%;

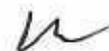
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State



Bank of India may fix from time to time for lending to the general public",

41. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 19.02.2026 is 8.8%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.
42. 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 the due date of possession i.e. 30.06.2013 to date of valid offer of possession, i.e. 04.12.2023 minus the force majeure period of COVID-19 period, i.e., 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021
43. Authority has got calculated the interest on total paid amount as per detail given in the table below:

Complainant claims to have paid an amount of Rs 19,52,537.99/-. In support, receipts of Rs 18,44,661.61/- have been annexed in complaint file as Annexure C-4. For total paid amount statement of account has been annexed at page 68 of complaint. Accordingly, an amount of Rs 18,44,661.61/- is taken from receipts annexed in complaint file and



remaining/differential amount of Rs 1,07,876.38/- is taken from statement of account dated 18.10.2022.

In complaint no. 1116/2023-

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 04.12.2023 (in ₹) excluding force majeure period				
			30.06.2013 DDOP or date of payment whichever later to 24.03.2020	25.03.2020 to 24.09.2020	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021	01.07.2021 to 04.12.2023 For sr. no. 3 18.10.2022 to 04.12.2023
1.	17,99,311.87	30.06.2013	1309702	No interest	100091	No interest	472238
2.	22,386.74	14.07.2014	13785	No interest	1245	No interest	5876
3.	1,30,839.38	18.10.2022	No interest	No interest	No interest	No interest	15989
Total:	19,52,537.99/-		1323487/-	No interest	101336	No interest	494103
			Total Rs 19,18,926/-				

In complaint no. 1458/2023

Builder Buyer Agreement for unit no. PE-147-SF, having area 1510 sq. ft was executed between the parties on 15.03.2012. As per clause 5.1 of this BBA, possession was supposed to be delivered within 24 months from date of execution of agreement along with grace period of 180 days for applying for occupation certificate. Fact herein is that respondent did not apply for occupation certificate after expiry of 24 months, i.e. 15.03.2014. So, the

grace period of 180 days cannot be allowed to respondent as the very condition precedent for this clause to become active did not take place. Accordingly, for purpose of calculation deemed date of possession is taken as 15.03.2014. Further, possession herein was offered to complainant on 19.06.2023 along with additional demand of Rs 9,49,471.82/- (inclusive of stamp duty charges of Rs 1,93,000/-). However, the Occupation certificate for the unit in question with final area as 1217.72 sq. ft was received on 18.08.2023. It is the stand of complainant that respondent did not issue valid offer of possession till date so delay interest be awarded till actual handing over of possession. On the other hand, ld. counsel for respondent argued that at the time when offer of possession dated 19.06.2023 was made to the complainant, the unit was lying complete and occupation certificate stands applied. Further, the respondent argued that it knew that the OC had been approved and the physical copy would be received shortly. This is evident from the fact that there is a gap of around 2 months between the offer and occupation certificate. He requested that delay interest be awarded till grant of Occupation Certificate only.

Perusal of file reveals that respondent applied for grant of occupation certificate vide an application dated 15.03.2023 which was subsequently received on 18.08.2023. However, offer of possession was issued by respondents to complainant on 19.06.2023 without receipt of Occupation Certificate. Said offer was not a valid offer of possession as it was not

supported with occupation certificate. So, the complainant was not bound to accept the same and to pay outstanding amount raised alongwith offer of possession. Respondents have taken a stand that gap of around 2 months between the offer of possession and date of occupation certificate be ignored and delay interest be awarded to the complainant only upto date of occupation certificate, i.e. 18.08.2023. In this regard, it is observed that respondents have failed to substantiate their plea with proper documentary evidence and legal position prevailing under RE (R&D) Act,2016. Fact remains that respondents have not issued any possession letter to the complainant till date after receipt of occupation certificate. Complainant has got to know about receipt of occupation certificate only after filing of present complaint that too on receipt of reply. During pendency of complaint, respondents did not even bothered to issue proper offer of possession duly supported with occupation certificate. Moreover, the proviso to Section 18 of the RERA Act,2016 clearly entitles the allottee to receive delay interest till handing over of possession. In view of aforesaid discussion, the plea of respondent does not hold any merit and is therefore rejected. The complainant is entitled to claim delay interest, w.e.f due date of handing over of possession (15.03.2014) till a valid offer of possession duly supported with Occupation Certificate is issued to him by the respondents minus the force majeure period of COVID-19 i.e., 25.03.2020

to 24.09.2020 and 01.04.2021 to 30.06.2021. Accordingly, calculations of delay interest is made as per details given in the table below:-

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 19.02.2026 (in ₹) excluding force majeure period				
			15.03.2014 DDOP or date of payment whichever later to 24.03.2020	25.03.2020 to 24.09.2020	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021	01.07.2021 to 19.02.2026
1.	24,29,175.04	15.03.2014	1582731	No interest	135129	No interest	1218314
2.	25,002	09.12.2016	8892	No interest	1391	No interest	12539
3.	3,17,690.37	05.09.2017	87609	No interest	17672	No interest	159333
Total:	27,71,867.41		1679232	No interest	154192	No interest	1390186
			Total Rs. 32,23,610 /-				
	27,71,867.41/-		Monthly interest w.e.f 19.03.2026 =Rs 24,605/-				

F. DIRECTIONS OF THE AUTHORITY

44. 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. 1116/2023, respondents are directed to handover actual physical possession of unit within next 45 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 19,18,926/- to the complainant towards delay already caused in handing over the possession.
- (ii) In complaint no. 1458/2023, respondents are directed to issue fresh offer of possession to complainant within next 45 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 32,23,610 /- to the complainants towards delay already caused in handing over the possession plus monthly interest of ₹ 24,605/- .
- (iii) Further respondents are directed to execute conveyance deed within 90 days after handing over of valid legal possession to respective complainant.
- (iv) Complainants will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them.
- (v) The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



(vi) The respondent shall not charge anything from the complainants which is not part of the agreement to sell.

45. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

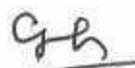
.....
PARNEET SINGH SACHDEV
[CHAIRMAN]

****Separate order containing dissenting view is attached below:**

1. We, the undersigned have the privilege of going through the order authored by Hon'ble Chairman and are in complete agreement with the findings on all issues except exemption on account of force majeure and delay interest in captioned complaints,
2. Respondents have pleaded that deemed date of possession was subject to the force majeure events such as NGT Bans and COVID-19. Details of said events have been summarized in the table below:-

Sr. No.	Details of Ban on Construction	Duration/Time Period
1.	Order dated 19.07.2016 passed by NGT	30 days
2.	Order dated 07.11.2017 passed by Environment Pollution (Prevention and Control) Authority	90 days
3.	Order dated 01.11.2019 passed by Environment Pollution (Prevention and Control) Authority	4 days
4.	Order dated 04.11.2019 passed by Hon'ble Supreme Court in M.C.Mehta vs Union of India	102 days
5.	Nationwide lockdown in order to curb COVID-19 w.e.f 25.03.2020 to 24.09.2020 and second wave of COVID-19 w.e.f 12.04.2021 to 24.07.2021	184 + 103 days 287 days
Total 513 days		

Deemed date of possession in the present lead case is 30.06.2013. Therefore, question arises for determination as to whether any situation or circumstances which could have happened after to this date, due to which the respondent could not carry out the construction activities in the


project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on the part of the respondents and the various reasons given by the respondents such as the NGT order, Covid outbreak etc. are not convincing enough for two fold reasons, firstly, as respondents had claimed that NGT orders passed in year 2016,2017 and 2019 have been one of the cause for delay in construction activity of the project. It is pertinent to mention here that respondents herein are in business of real estate sector and are well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondents considering all such factors. Moreover, any event that subsequently occurred in the year 2016 could not have hampered the deemed date/construction work that was to be completed till the year 2013. Secondly, respondents themselves had promised to deliver possession of unit to complainant by 30.06.2013 so any delay if has occurred during completion of apartment, the respondents cannot burden it upon complainants. Complainant is not at fault for trusting respondents by depositing the amount to respondents in return of delivery of possession of unit. Therefore, now, the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

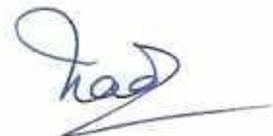


As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr, bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

"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."

3. Moreover, the respondents have not provided the construction status of unit in question with latest photographs on record to support the fact that respondents have fulfilled their obligations and complainants are shying away from their duties/obligations. In the same terms, it is a mere submission by respondents that complainant did not honour demand letters on time as no demand in particular has been pin pointed to establish it. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.



4. In view of aforesaid observations, the complainant in complaint no. **1116/2023** is entitled to delay interest ranging from deemed date of possession (30.06.2013) to the date of valid offer of possession, i.e. offer made after obtaining occupation certificate from the competent authority (04.12.2023) in terms of Rule 15 of HREERA Rules,2017. Calculation of delay interest is incorporated in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 04.12.2023 (in ₹)
1.	17,99,311.87	30.06.2013	20,28,441/-
2.	22,386.74	14.07.2014	22,727/-
3.	1,30,839.38	18.10.2022	15,989/-
Total:	19,52,537.99/-		20,67,157/-

5. In view of aforesaid observations, the complainant in complaint no. **1458/2023** is entitled to delay interest ranging from deemed date of possession (15.03.2014) to the date of valid offer of possession supported with occupation certificate in terms of Rule 15 of HREERA Rules,2017. Calculation of upfront delay interest alongwith monthly interest is incorporated in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 19.02.2026 (in ₹)





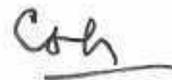


1.	24,29,175.04	15.03.2014	31,33,835/-
2.	25,002	09.12.2016	24,857/-
3.	3,17,690.37	05.09.2017	2,90,465/-
Total:	27,71,867.41		34,49,157/-
Monthly interest commencing w.e.f 19.03.2026	27,71,867.41/-		24,605/-

6. Accordingly, parties are directed as follows:-

- i. In complaint no. 1116/2023, respondents are directed to handover actual physical possession of unit within next 45 days to the complainants along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest calculated above in table mentioned in para 4.
- ii. In complaint no. 1458/2023, respondents are directed to issue fresh offer of possession within next 45 days along with statement of account issued in compliance of directions passed in this order incorporating therein delay interest calculated above in table mentioned in para 5.
- iii. Complainants are also directed to accept the possession within next 30 days of receipt of offer alongwith payment of outstanding due amount, if any.

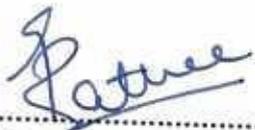






7. With the aforesaid directions, the cases stands **Disposed of**. File be
consigned to record room after uploading on the website of the
Authority.


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]