



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarerera.gov.in

Complaint no.:	248 of 2021
Date of filing.:	26.02.2021
Date of first hearing.:	22.04.2021
Date of decision.:	22.01.2026

Alka Sachan
R/o House no. 1425, Sector-3
Ballabgarh
Faridabad, Haryana-121007

....COMPLAINANT

VERSUS

1. M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi-110001
2. M/s New Age Town Planner Ltd
M-11, Middle Circle, Connaught Circus,
New Delhi-110001

....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Present: - Mr. Pranjal P. Chaudhary, Counsel for complainant through VC
Mr. Hemant Saini, Counsel for the respondents.

[Signature]

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	P-05-FF, 1418 sq. ft.
5.	Date of Allotment	24.12.2009

6.	Date of builder buyer agreement	09.06.2010
7.	Due date of possession	09.06.2012
8.	Possession clause in BBA (Clause 2 of addendum to the agreement dated 04.09.2010)	That the purchaser understands and agrees that clause 4.1, 4.3 and 5.1 of the floor buyers agreement the covenant written that 'Seller/Confirming party proposes to handover the possession of the floor to the purchaser within a period of 24 months from the date of sanction of the building plan' is amended and modified and henceforth the same shall be read and understood that 'Seller/Confirming party proposes to handover the possession of the floor to the purchaser within a period of 24 months from the date of execution of floor buyer's agreement OR on completion of payment of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser whichever is later'.
9.	Total sale consideration	₹ 25,56,002/-
10.	Amount paid by complainant	₹33,69,467/-
11.	Offer of possession.	21.11.2022.
12.	Cancellation letter	15.05.2023
13.	Occupation Certificate	07.06.2022



B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the original allottees had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75, Faridabad, Haryana by paying booking amount of Rs 2,91,700/- on 22.08.2009. Allotment letter for the unit no. P-05-FF, 1418 sq. ft. was issued to original allottees. A builder buyer agreement was executed between the parties on 09.06.2010 (as such, date for BBA is mentioned as 09.06.2009 in pleadings, but supporting documents attached are of date 09.06.2010) and as per clause 2 of the addendum to agreement, possession of the unit was to be delivered within a period of twenty four (24) months from the date of agreement. Taking the period of 24 months from the date of execution of the floor buyer agreement, deemed date of possession works out to 09.06.2012.
4. That present complainant stepped into the shoes of the initial buyers vide nomination letter dated 17.04.2013 wherein the respondent agreed to the endorsement and also acknowledged that a sum of Rs.13,79,103/- has been received and that the new buyers shall abide by the terms and conditions of the initial Floor Buyer agreement. Copy of Nomination Letter is annexed as Annexure C-3.
5. That complainant made the last payment of Rs.2,89,659/- under the head of BSP and other charges on 03.12.2019. That the total amount paid by the

complainant herein as per the statement of account dated 03.12.2019 issued by the respondents showcased as Rs.3,039,567.22/- . Said amount is almost the full amount payable at the end of the complainant. Copy of last payment receipt along with statement of account is annexed as Annexure C/4(Colly).

6. That it has been more than 8 years but there are no signs of possession at the end of the respondents which clearly shows that they have violated all their obligations under the signed FBA and have caused injustice to the complainant herein.
7. That as per section 19 (6) RERA Act, 2016, complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Further, as per the floor buyer agreement and the contractual relationship between parties, PLC should not be charged and also the Club membership should not be charged till the time there is no actual construction of club from the end of the respondent.
8. That such an inordinate delay of over 8 years in completion of the project itself is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainant and respondents. Complainant thereby wishes to seek possession of the said unit in terms of Section 18(1) read with Section 18(3) of the Act along with of delay interest. Thus, the present complaint.

C. RELIEF SOUGHT

9. That the complainants seeks following relief and directions to the respondent:-

- i. Pass an order for possession of the said unit along pendent lite and future interest thereon *(a) 18%* from the due date of payment till the date of actual payment, in favour of the complainant and against the respondents, his legal representatives, heirs and assigns being the amount due and payable to the complainant from the respondents on account of amount paid as per the customer ledger maintained with the respondent company.
- ii. Pass such other order(s), direction(s) relief(s) as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case and in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 19.03.2025 pleading therein:

10. That respondent no. 2 is not a developer or a confirming party to the Floor Buyer's Agreement executed between the parties and no specific relief has been sought from respondent no. 2. Hence, respondent no. 2 is not a

necessary party to the present complainant and the name of respondent no. 2 should be deleted from the array of parties.

11. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 09.06.2010.
12. That the Original Allotees booked an independent residential floor in the project-'Park Elite Floor' of the respondent no. 1. It is submitted that respondent no. 1 has given an inaugural discount of Rs.1,27,800/- to the complainant along with the timely payment discount of Rs.79,517.14/-.
Copy of the Booking form is annexed as Annexure R-1
13. That the Original Allotees were tentatively allotted an independent floor bearing no. P-05-FP on first floor, Block PE, tentatively admeasuring 1,418 sq. ft., vide the provisional allotment letter dated 24.12.2009. Copy of the allotment letter dated 24.12.2009 is annexed as Annexure R-2.
14. That the respondent no. 1 sent two copies of the Floor Buyer's Agreement to the Original Allotees and subsequently, the Floor Buyer's Agreement was executed between the parties on 09.06.2010. That on the same date an Addendum to the Floor Buyer's Agreement dated 09.06.2010 was also executed between the parties. Copies of the Floor Buyer's Agreement dated

09.06.2010 and Addendum to the Floor Buyer's Agreement dated 09.06.2010 are annexed as Annexure R-3(Colly).

15. Thereafter the original allottees and the complainant requested the respondent no. 1 to endorse the unit in the name of the complainant. That unit was transferred to the complainant vide Nomination Letter dated 17.04.2013. Copy of the Nomination Letter dated 17.04.2013 is annexed as Annexure R-4.

16. That complainant being a subsequent buyer, has no right to seek delay possession charges. That at the time of nomination of the complainant, the project was already delayed due to reasons beyond the control of the company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent No. 1, the complainant willingly and voluntarily entered into the transfer documents thereof leading to her nomination.

17. That such prior knowledge, willing and self-initiated endorsement of the complainant, without any protest, amounts to acceptance of the existing circumstances and the complainant cannot be allowed to reap benefits by extracting monies from the respondent no. 1 and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainant by relying upon *Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479*, where it was noted that relief to subsequent Allottee has to be fact- dependent. Moreover,

Maharashtra RERA in Sandeep Sahebrao Valase Vs. Glomore Constructions No. CC006000000193435; and Ors. Complaint MANU/RR/0189/2021 had, in a case filed by subsequent allottee, held that the complainants are not entitled to delay possession charges under section 18 of the Act. Hence, delayed possession charges in the above-mentioned circumstances cannot be allowed to the complainant.

18. That subsequent allottee has no right to delayed possession charges and termination of the unit, it is submitted that as per clause 4.1 of FBA r/w clause 2 of Addendum, the due date of possession was proposed to be handed over in 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, whichever with a 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 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.
19. That 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 respondents in accordance with

clauses 4,1 and 13 of the flat buyer agreement and clause 2 of Addendum to the flat buyer agreement.

20. 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.

21. 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-IDM-I(Δ) 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.

22. That from the facts indicated above and documents appended, it is comprehensively established that a period of 313 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. Thus, the respondents have been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 24 months as has been provided in the Agreement.

23. 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-5(Colly). Complainant has been chronic defaulter and defaulted in adhering to the obligation of making the due payment as per the chosen Payment Plan. Accordingly, the Complainant stood in fundamental breach of the Agreement.

24. That despite innumerable hardships being faced by the respondent no. 1, the respondents completed the construction of the project and services and obtained the occupation certificate on 07.06.2022. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, respondents ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the Respondents cannot exercise any influence. Respondent No. 1 has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the Occupation Certificate. Copy of the occupation certificate dated 07.06.2022 is annexed as Annexure R-6.

25. Thereafter, the Respondent No. 1 offered the possession of the unit to the complainant on 21.11.2022. It is pertinent to mention that vide letter dated 21.11.2022 regarding offer of possession, the complainant was asked to make the requisite payment based on the Statement of Final Dues and complete the documentation required to enable the respondent no. 1 to initiate the process of physical possession of the unit, however, the

complainant never turned up to take the possession of the unit. That the respondent no. 1 has sent various reminders but to no effect. Thereafter respondent no. 1 issued a Final Demand Notice dated 15.04.2023. It is submitted that the respondent waited for approx. 2 years from offer of possession before cancellation of the unit of the complainant, however, the Complainant willingly and voluntarily did not take possession of the Unit. Copy of the letter of offer of possession dated 21.11.2022 is annexed as Annexure R7 and copy of the Final Demand Notice dated 15.04.2023 is annexed Annexure R8.

26. That complainant did not pay heed to the reminder letters issued by the respondent no. 1 and the letter for Last and Final Opportunity for the Payment of the outstanding amount dated 15.04.2023 within a period of 30 days failing which the Respondent No. 1 had no option but to terminate the unit of the complainant vide Termination Letter dated 15.05.2023. Copy of the Termination Letter dated 15.05.2023 is annexed as Annexure R9.
27. Upon the non-payment by the complainant, the complainant was considered under default under Clause 11.1 of FBA, and upon the failure of the complainant to pay due amounts/installments, the Respondent No. 1 had the complete right to terminate the unit of the Complainant.
28. That post termination of the unit, the complainant approached the respondent for restoration of allotment of her unit. That the respondent being a customer-centric company in their bonafide conduct agreed for the same on

the assurance of the complainant to make the payment of the outstanding dues. That it is submitted that the respondent No. 1 has issued a cheque dated 11.07.2024 amounting to Rs.14,75,275/- to the complainant for delayed penalty interest. That thereafter, the respondent had once again issued a reminder letter dated 07.09.2024 to the complainant re-notifying the complainant that her unit is complete and requested the complainant to take the possession of the unit after completing the documentary and financial formalities.

E. ADDITIONAL DOCUMENTS FILED BY THE PARTIES

29. Additional documents filed by the respondent in registry on 12.09.2023- Respondent has placed on record offer of possession dated 21.11.2022 wherein paid amount is shown as Rs 30,39,567/- and outstanding amount is Rs 13,11,014/- inclusive of stamp duty charges of Rs 4,28,000/-. Copy of Occupation Certificate dated 07.06.2022 is also placed on record.

30. Complainant had filed payment receipts in support of paid amount in registry on 16.12.2025. Calculations of interest will be made by taking them on record.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS

31.1.d. counsel for complainants submitted that complainants had booked unit in respondent's project-Park Elite Floor in year 2009. Thereafter, builder buyer agreement for unit no. P-05-FF was executed between the

parties on 09.06.2010 and in terms of the same, possession was supposed to be delivered upto 09.06.2012. However, respondent has offered the possession on 21.11.2022 (during pendency of complaint) but same is accompanied with illegal demands/charges on account of cost escalation, club membership, GST, Vat, Service tax, electricity connection, Electrification and STP and EDC/IDC. He requested that issue of these charges be decided alongwith claim of possession and delay interest. Further, he clarified that all the reliefs have been sought against respondent no. 1 only.

32. In rebuttal, Mr. Hemant Saini, learned counsel for the respondents submitted that complainant is entitled to claim delay interest, only w.e.f date of nomination 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 21.11.2022 after receipt of occupation certificate on 07.06.2022. Several reminders were also issued to complainant in respect of said possession. It is the complainant who has failed to accept the said offer of possession and make payment of the outstanding amount till date.

33. At the time of arguments, specific query was raised to 1d. counsel for complainant as to whether cheques amounting to Rs 14,75,275/- has been received from respondent or not? To this, 1d. counsel for complainant denied receipt of any amount from respondent.

G. ISSUES FOR ADJUDICATION

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

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.I 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. P-05-FF, admeasuring 1418 sq. ft in the real estate Project "Park Elite Floor" being developed by the Respondent No.

1. The Respondent No. 2 is neither a developer nor 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. Further, Id. counsel for complainant clarified at the time of arguments that no relief in particular has been sought against respondent no. 2. Hence, no direction is being issued to respondent no. 2 in this final order.

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

The due date of possession in the present case is 09.06.2012 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.Mchta 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.

35. Factual matrix of the case is that a unit was booked in the project being developed by the respondent no. 1 namely "Park Elite Floors" situated at Sector 75 to 85, Faridabad, Haryana by original allottees in the year 2009. Allotment of unit no. P-05-FF having area 1418 sq. ft. was issued in favor of original allottees on 24.12.2009. A builder buyer agreement was executed between both the

original allottee and respondent no. 1 on 09.06.2010 and in terms of it, the possession of the unit was to be delivered within a period of 24 months, i.e. upto 09.06.2012. An amount of Rs 33,69,467/- has been paid by the complainant against the basic sale consideration of Rs 25,56,002/-.

36. As per clause 2 of addendum of the agreement 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 alongwith 20% EDC and IDC by the purchaser whichever is later. Since, date of completion of payment of 35% of BSP alongwith 20% EDC and IDC by the complainant has not been disclosed by the respondent no. 1, so taking 24 months from date of agreement, the deemed date of possession comes to 09.06.2012.

37. Respondent no. 1 has stated allotment of unit was terminated vide termination letter dated 15.05.2023. However, it is pertinent to mention here that same stands restored as per respondent's own version in para 36 of written statement. Hence, no adjudication is required on this issue.

38. Authority observes that after a lapse of 10 years, respondent no. 1 has offered possession of unit on 21.11.2022 along with additional demand of Rs 13,11,017/- (inclusive of stamp duty charges of Rs 4,28,000/-). Complainant, has challenged the illegal demands raised along with said offer of possession at the time of oral arguments. In this regard, it is observed that the complainant had opted for a construction linked plan and had paid more than basic sale price upto year 2019 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.

39. With regard to the contention of the complainant, the Authority has carefully examined the statement of account issued along with offer of possession dated 21.11.2022 and observes as follows:

- i. With regard to the cost escalation charges of ₹86,965/-, it is observed by the Authority that the deemed date of possession in captioned complaint is ascertained as 09.10.2012. Respondent no. 1 has issued an offer of possession to the complainant on 21.11.2022 after a gap of more than 10 years. Cost escalation charges, though a mentioned clause in the floor buyer agreement, are unjust at this stage since there has been a huge delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs during the stipulated period of construction of project, but in this case, the deemed date of delivery of possession had long passed and the delay was solely caused by the respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainant, having already endured a 10-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. Therefore, demand raised by the respondents on account of cost escalation charges be set aside.

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

iii. With regard to the demand raised by the respondent on account of GST, Authority is of the view that the deemed date of possession in this case works out to 19.10.2012 and charges/taxes applicable on said date are payable by the complainant. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in

delivery of possession has already been attributed on the part of the respondent's. In case the respondent had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the complainant is not liable to pay GST charges.

- iv. With regard to demands raised on account of Electricity connection charges and Electrification and STP charges it is observed that vide clause 1.5 sub-clause 'g', 'i' and 'j' of the buyer's agreement dated 09.06.2010 the complainant had agreed to pay these charges to the respondent. Since these charges are in consonance with the buyer's agreement, the complainant cannot shy away from their obligation of making requisite payments. Hence, these charges are payable by the complainant.
- v. With regard to demands raised on account of EDC/IDC charges, it is observed that these charges are in consonance with the terms of the agreement as per clause 1.5 and hence are payable on the part of the complainant.

40. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 36 of this order, respondent should have delivered possession of the floor by 09.06.2012. However, the respondent no. 1 failed to construct the project and deliver possession of the booked floor by the stipulated date. An offer of possession was issued to the complainant on

21.11.2022. Along with said offer of possession respondent had issued a detailed statement of account of payable and receivable amounts which has been challenged by the complainant on account of several discrepancies that have been already adjudicated in para 39 of this order. Said offer of possession was a valid offer of possession duly issued after receipt of occupation certificate on 07.06.2022. There was no impediment in the complainant having accepted the same. Admittedly there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant.

41. As such, the complainant has stepped into shoes of original allottees vide nomination dated 17.04.2013. It is the argument of respondent that complainant being subsequent allottee is entitled to delay interest, if any, from date of nomination not the date of buyer agreement. Considering facts and submissions of record, it is observed that the complainant/subsequent allottee had purchased the unit after expiry of the due date of handing over possession. Herein, the Authority is of the view that subsequent allottee cannot be expected to wait for any uncertain length of time to take possession. Even such allottees are waiting

for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Relying upon judgment dated 22.07.2021 passed by Hon'ble Apex Court in *Civil Appeal no. 7042 of 2019 M/s Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh*, wherein it was held that relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law and has held that the subsequent purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate and others (builder) about this fact in April 2016, the interest of justice demand that the interest at least from that date should be granted, in favour of the respondent.

42. Therefore, in light of Laureate Buildwell judgment, the Authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.

43. Therefore, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the

date of nomination i.e 17.04.2013 till the date of valid offer of possession i.e 21.11.2022. However, interest shall not be charged for the period of 9 months as discussed in para F.II that covers force majeure conditions.

44. 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".

45. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "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;

46. 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 (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"

47. 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., 22.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

48. 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 date of nomination till the date of a valid offer of possession, i.e. 17.04.2013 to 21.11.2022 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.



49. Authority has got calculated the interest on total paid amount as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 21.11.2022 (in ₹) excluding force majeure period				
			17.04.2013 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 21.11.2022
1.	14,74,144.15	17.04.2013	1105293	No interest	82003	No interest	222018
2.	3,44,859.16	26.03.2016	148979	No interest	19184	No interest	51939
3.	2,22,278	13.04.2016	94840	No interest	12365	No interest	33477
4.	3,50,000	28.03.2017	113193	No interest	19470	No interest	52713
5.	29,144.31	29.03.2017	9417	No interest	1621	No interest	4389
6.	3,69,725.21	28.06.2018	69577	No interest	20567	No interest	55684
7.	2,89,657.91	06.11.2018	43282	No interest	16113	No interest	43625
8.	2,89,659	03.12.2019	9685	No interest	16113	No interest	43625
Tot al:	33,69,467.74/-			No interest		No interest	
Total Rs 22,89,172/-							

I. DIRECTIONS OF THE AUTHORITY

50. 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(l) of the Act of 2016:

- i. Respondent no. 1 is directed to handover actual physical possession of unit within next 45 days to the complainant 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 49.
- ii. Complainant is also directed to accept the possession within next 30 days of receipt of offer alongwith payment of outstanding due amount, if any.
- iii. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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

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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]

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PARNEET S. 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 complaint.
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 case is 09.06.2012. 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 2012. Secondly, respondents himself had promised to deliver possession of unit to complainant by 09.06.2012 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 (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.”

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 complainant is shying away from his 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 is entitled to delay interest ranging from date of nomination (17.04.2013) to the date of valid offer of possession, i.e offer made after obtaining occupation certificate from the competent authority (21.11.2022) in terms of Rule 15 of HIRERA Rules,2017. Calculation of delay interest is incorporated in the table below:

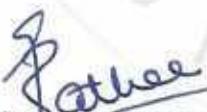
Sr. No.	Principal Amount (in ₹)	Date of nomination or date of payment whichever is later	Interest Accrued till 21.11.2022 (in ₹)
1.	14,74,144.15	17.04.2013	15,29,265
2.	3,44,859.16	26.03.2016	2,48,163
3.	2,22,278	13.04.2016	1,58,769
4.	3,50,000	28.03.2017	2,13,855
5.	29,144.31	29.03.2017	17,799
6.	3,69,725.21	28.06.2018	1,75,912

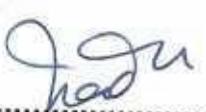
7.	2,89,657.91	06.11.2018	1,26,589
8.	2,89,659	03.12.2019	92,99,2
Total:	33,69,467.74/-		25,63,344/-

5. Accordingly, parties are directed as follows:-

- i. Respondent no. 1 is directed to handover actual physical possession of unit within next 45 days to the complainant 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. Complainant is also directed to accept the possession within next 30 days of receipt of offer alongwith payment of outstanding due amount, if any.

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

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DR. GEETA RATHEE SINGH
[MEMBER]

.....

NADIM AKHTAR
[MEMBER]