



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	543 of 2024
Date of filing.:	08.04.2024
Date of first hearing.:	01.07.2024
Date of decision.:	23.04.2026

Ankur Mehan S/o Mr. Subhash Mehan & Surbi Mehan W/o Sh. Ankur Mehan
Both R/o House no. A5-24, Tulip White, Sector-69
Gurugram, Haryana-122101

....COMPLAINANTS

VERSUS

M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi-110001

....RESPONDENT

Complaint no.:	544 of 2024
Date of filing.:	08.04.2024
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Atul Rohtagi S/o Mr. Krishna Kumar Rohatgi
R/o House no. A2/503, Tulip Orange, Sector-70
Gurugram, Haryana-122101

....COMPLAINANT

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VERSUS

M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi-110001

....RESPONDENT

CORAM: **Parneet Singh Sachdev** **Chairman**
Dr. Geeta Rathee Singh **Member**

Present: - None for complainant.

Ms. Neha for Adv, Hemant Saini, Counsel for the respondent.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Both of Captioned complaints are taken up together for hearing as they involve similar issues and are against same project of respondent "Park Elite Premium", Sector-84, Faridabad. This final order is being passed taking complaint no. 543/2024 titled as Ankur Mehan & Surbi Mehan vs BPTP Ltd as lead case.
2. Present complaint has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



A. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants had applied for booking of flat with the respondent by paying Rs 2.5 lacs in July, 2009. Builder buyer agreement was executed between the parties on 10.01.2011 for flat no. K-503, having area of 1128 sq. ft. in project-Park Elite Premium, Sector-84, Faridabad, Haryana.
4. That as per clause 3 of the agreement, the project was to be completed within a period of 36 months with a grace period of 180 days after the expiry of the said 36 months for obtaining occupation certificate. According to said clause possession ought to have been given in first quarter of 2013 even if the 180 days grace period is included. However, the project was not completed and no reason much less than a reason sustainable in law was given and no occupation certificate had been granted by the competent authority. Copy of flat buyer agreement is annexed as Annexure A/1.
5. That the respondent started construction of the unit and started raising demands in terms of the construction linked plan opted by the complainant. Last milestone in the construction linked plan, i.e. casting of 9th floor slab was achieved on 04.09.2012 and the demand was raised accordingly by the respondent. Complainant cleared the said demand on



11.09.2012. From the above, it is clear that the construction from ground floor to ninth floor was completed between 21.10.2011 and 04.09.2012, i.e. 10 months. Despite completing the entire construction as envisaged in the construction linked plan within 10 months the respondent went in deep slumber thereafter and failed to complete the construction the sundry development jobs even in a period of 10 years.

6. That the complainant was forced to file a complaint before this Hon'ble Authority which was registered vide complaint no. 1353/2018. Respondent contested the said complaint by filing written statement before this Hon'ble Authority. The Hon'ble Authority allowed the complaint and directed the respondent to handover the possession of the unit, receipt of occupation certificate and pay upfront delay penalty and monthly delay interest till handing over of possession. True copy of judgment dated 09.10.2018 passed in complaint no. 178 of 2018 is enclosed as Annexure A/4.
7. That the Hon'ble Authority had allowed the complaint by directing the respondent to offer possession in terms of principles laid down in its earlier judgment passed in complaint no. 113/2018 titled Madhu Sareen vs BPTP Ltd. Copy of judgment is annexed as Annexure A/5.

8. That the respondent failed to comply with judgment passed by this Hon'ble Authority due to which the complainant was compelled to file an execution petition which is still pending. Execution petition is registered as complaint no. 1352019. During the pendency of execution, the respondent had made part payment of Rs 4,02,703/- and Rs 5,79,730/- totaling to Rs 9,82,432/- through post dated cheques.
9. That the respondent had issued an offer of possession vide letter dated 06.09.2023 which shows the payment of Rs 43,78,627/- received from the complainant. The complainant has however, paid Rs 29,91,877/- and the differential amount of Rs 13,86,713/- has unlawfully been set off without any basis. The demands which were contentious in the first round of litigation have illegally been shown as paid by the complainant and the amount so paid has been adjusted from the delay penalty which the Hon'ble Authority had awarded in the first round of litigation.
10. That the statement of account issued by the respondent is one-sided, arbitrary, illegal, illogical and inflated only to cause wrongful loss to the complainant. The offer of possession is defective as it is accompanied by illegal demands/adjustments and is not binding on the complainant. Headwise challenge to the adjustments made against specific heads are being dealt with as under:-

- a. Cost escalation- Respondent had raised demand of Rs 7,33,040/- towards cost escalation which is inflated, unjustified, unreasonable and derived by manipulating its books of accounts by the respondent. As per the agreement the project has to be completed and possession delivered in 2013-2014. There is no basis that has been supplied by respondent as to how the cost escalation has been calculated. Further, balance sheets of the company the budgeted cost for the entire project was Rs 148,38,07,000/-. As it will be revealed from the balance sheets of the company the cost actually incurred against the cost of material is same as the material cost budgeted at the time of start of project. Actual cost of material never exceeded the budgeted cost therefore, the complainant is not liable to pay anything against the purported cost escalation.
- b. EDC, EEDC, IDC- That the respondent has demanded and collected Rs. 499026 from the complainant towards EDC and EEDC. The Department of town and Country Planning issued license #62 of 2010 to develop the project in question over the land measuring 11.09 acres sector 84 Faridabad, Haryana. As per the terms of the license and the agreement entered between the respondent and the state government as per clause one1(i) the respondent was to pay external development charges at the rate 139.00 lakhs per gross

acre. Further in terms of clause 4 the respondent was to pay Rs. 20691300 (two crore six lakh ninety one thousand three hundred) towards infrastructure development charges. The builder-buyer agreement was entered between the complainant and the respondent on 10th January 2011 and the development charges of Rs 150 per square feet was to be charged by the respondent from the complainant towards external development charges. The State government revised and finalized the external development charges from 139.00 lakhs to 232.84 lakhs per gross acre as per government memo dated 25 May 2011. The respondent raised a fresh demand of Rs. 3,30,018/- on 07.06.2012 stating that the government has revised the EDC to 442.40 per square feet and therefore an additional amount of Rs. 292.57 per square feet was due and payable by the complainant the complainant immediately paid additional EDC@292.57 per square feet.

That the demand was not accompanied by any supporting document showing the demand of Rs 442.40 per square feet by the government. The respondent has overcharged the complainant on account of EDC. As per the demand by the government after finalising and enhancement the EDC chargeable was Rs 232.84 lakhs per gross acre. As per the license the total area of the project

is 11.094 acres. The total EDC leviable on the project is Rs. 258312696 (23284000 11.094). The total saleable area of the project is 876644 square feet the total demand of EDC is to be loaded on the total saleable area to arrive at per square feet charge. In the present case, the EDC payable in terms of the rates fixed by the government per square feet is rupees 294.66 whereas, the respondent has charged rupees 442.40 towards EDC in the name of government. The respondent has overcharged the complainant at the rate 142.29 per square feet. The amount of EDC paid in the year 2012 @ 292.57 Per Sq. Ft has been lying with the builder ever since as the same has not been paid to the State government. The Complainant is entitled for interest on the said amount for the period the builder has used the said money without depositing the same with the state government. In sum, the complainant submits that he is entitled for

- (i) return of amount overcharged along with interest;
- (ii) interest on amount collected but not paid to the state government; (iii) return the amount of EDC collected at the rate 292.57 per square feet to be paid as and when the lis pending in the Hon'ble High Court regarding charging of enhanced EDC is decided. The Govt. memo dated

25.05.2011 applicable on the present project is enclosed herewith as Annexure A/8. The true copy of the affidavit filed by the Department of Town and Country Planning dated 23.06.2023 pertaining to the present project in the context of EDC/EEDC is enclosed herewith as Annexure A/9. The affidavit clearly states that the entire EEDC is due and nothing has been deposited by the respondent with the Government. The true copy of the license for the project is enclosed herewith as Annexure A/10.

e. Increase in Area- As per the agreement the area allotted to the complainant was 1128 sq. ft. The respondent has unilaterally and illegally shown the area to be increased to 1232 sq.ft. and demanded an additional amount of Rs. 210304/- in the impugned offer of possession. It is submitted that there is no supporting document supplied by the respondent to show the increase in the area. There is nothing provided by the respondent to show that the area sanctioned at the time of entering into the agreement and at the time of offer of possession is different. The sanctioned plan is of 1128.00 sq. ft therefore, the complainant is not liable to pay for the purported increased area.

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d. Stamp Duty- That the deemed date of possession was in the year 2013. The complainant is liable to pay stamp duty as applicable in the year 2013 and not in the year 2023. The respondent is liable to pay the differential amount between the rates applicable in the year 2013 and 2023.

e. GST- That it is submitted that the complainant is not liable to pay any fresh incidence of tax applied after the deemed date of possession. The demand of Rs. 156368/- against GST is liable to be set aside as the deemed date of possession had long passed by the time GST was introduced by the government of India.

11. Aggrieved by the aforesaid illegal demands of the respondent, the complainant had met the respondent several times for recalling the impugned statement of account and handing over the peaceful possession of the unit without any further unjustified and illegal demands. Till date, however, the said demand has not been recalled rather the respondent is threatening the applicant with dire consequences in case his demands are not met. Thus, the present complaint.

B. RELIEFS SOUGHT

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



- i. Declare that the impugned offer of possession (Annexure A-6) is non-est and illegal as it is conditional on payment of demands which are illegal, arbitrary and in violation of the terms of the agreement and the provisions of the Act,
- ii. Declare that the complainant is entitled for monthly interest payable till actual handing over of possession;
- iii. Direct the respondent to pay the delay penalty calculated till actual handing over of possession on the entire amount paid by the complainant;
- iv. Quash the impugned offer of possession/statement of account (ANNEXURE A/7) more particularly demands against Cost Escalation, Increase in area, GST, differential stamp duty between 2013 and 2023 being illegal and against the provisions of The Real Estate (Regulation and Development) Act, 2016;
- v. Direct the respondent to refund with interest the amount overcharged from the complainant in the name of EDC and EEDC.
- vi. Any other relief which the Applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the



Haryana State Real Estate (Regulation & Development)
Rules, 2017.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 28.10.2024 pleading therein:

13. It is to be noted that the complainants had previously filed Complaint before the I.d. Authority bearing no. 178 of 2018 seeking relief of Delayed possession charges and challenging the charges like cost escalation, EDC, increase in area etc. The present complaint is hence barred by the principle of res-judicata as the issues raised by the Complainants vide the present complaint has already been adjudicated and decided by the Authority in complaint no. 178 of 2018. That the complaint no. 178 of 2018 was disposed off vide order dated 09.10.2018. A copy of the order is already annexed with the Complaint. Thus, the rights between the parties were substantially, conclusively, and finally decided between the parties by the I.d. Authority. That after the complete adjudicating of the reliefs in a previous complaint, the filing of the present complaint is barred by the principle of Res Judicata. That once a matter is finally decided by a competent forum, no party can be permitted to reopen it in a subsequent litigation. The principle essentially follows the latin maxim that "Res judicata pro veritate accipitur" to "A matter adjudged is accepted as true".

14. That in the previous complaint, the complainants sought the relief of DPC, alleged illegality of charges and their rights were duly and completely adjudicated upon. The policy of law is to prevent multiplicity of proceedings and one party shall not be vexed again and again. That in such a circumstance, the present Complaint could not have been filed. Present complaint is barred by the principle of Res Judicata.
15. That complaint is barred under order II Rule 2 of the Code of Civil Procedure, 1908. As noted above, the complainants had filed a previous complaint in which the issues were decided between the parties. The issue regarding the stamp duty was not raised by the Complainants by filing the previous complaint. Relief of stamp duty charges were never raised by the complainants vide the previous complaint therefore the same is barred by Order II Rule 2, CPC, 1908.
16. Additionally, at this stage, the complainants had also filed an execution petition seeking enforcement of claims of the previous order. Hence, the present complaint is barred and should not be entertained.
17. That the Original Allottee expressed her interest and willingness to purchase a unit in the project of the Respondent known under the name and style of "Park Elite Premium". Accordingly, an application/ booking form was executed by the Complainants. A copy of the Booking form dated 28.07.2009 is annexed as Annexure R1.

18. Consequently, the Original Allottee was provisionally allotted K-503, Tower K admeasuring 1128 sq. ft. super built-up area was allotted on the basis of the tentative layout plan. A copy of the Allotment Letter dated 16.12.2009 is annexed as Annexure R2.
19. That thereafter, the Original Allottee mutually, willingly, and voluntarily entered into a Flat Buyer's Agreement on 10.01.2011. At this stage, it is pertinent to highlight that the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the FBA. A copy of the Flat Buyer's Agreement dated 10.01.2011 is annexed as Annexure R3.
20. That it is pertinent to highlight that it was agreed between the Parties that the area of the Unit is tentative and subject to change, as also agreed under the FBA.
21. That it is submitted that the unit was later endorsed to Mrs. Shakuntala Devi and the endorsement form dated 06.12.2011 was executed between the parties.
22. That thereafter, the unit was transferred from the subsequent allottee to the present Complainants vide endorsement form dated 29.03.2012. A copy of the Endorsement Form dated 29.03.2012 is annexed and marked as Annexure R5.



23. That without prejudice to the maintainability challenged by the respondent in the present complaint, it is submitted that the complainants being second subsequent buyers, have no right to seek delay possession charges. That at the time of nomination of the complainants, the complainants were very well aware of the actual status of the Project and having knowledge of the existing status, the complainants willingly and voluntarily purchased the unit in the project of the Respondent. That such prior knowledge, willing and self-initiated purchase of the complainants, without any protest, amounts to acceptance of the existing circumstances and the Complainants cannot be allowed to reap benefits by extracting monies from the Respondent and forgoing their complete satisfaction against the Unit. Hence, the Complaint is liable to be dismissed with costs against the complainants. Reliance is placed upon the judgment passed by Hon'ble Supreme Court in Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC Online SC 479.
24. That additionally, it is submitted that the charges against which the Complainants seeks refund, were also levied as per the agreed terms and conditions of the Buyer's Agreement, and the same were paid by the Complainants without any demur whatsoever. That the present Complaint is nothing but an attempt on part of the Complainants to seek wrongful gains over the wrongful loss of the Respondent.



25. That it is submitted that the due date of possession, as per clause 3.1. is 36 months from the date of issuance of the sanction letter of the Colony with 180 days grace period, however, the same was subject to the Complainants having complied with the terms and conditions of the Agreement, force majeure events and other circumstances beyond the control of the Respondent.
26. 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.
27. That throughout this period, the Respondents has faced grave difficulties. The Respondents were affected by circumstances beyond the control of the Respondents, the benefit of which is bound to be given to the Respondents in accordance with clause 10 of the FBA.
28. 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.

29. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the Unit. That is pertinent to note herein that the Complainants have been in default of timely payment of the



demands since the very beginning. The list of all the demands raised and the reminders issued are annexed herewith the reply. It is further submitted that despite there being a number of defaulters in the Project, including the Complainants, the Respondent had to infuse funds into the project and has diligently developed the Project in question. It must be noted by the Hon'ble Authority that despite the default caused, and occurrence of circumstances beyond the power of the Respondents completed the construction of the project and received an Occupation Certificate on 21.08.2023. A copy of the Occupancy Certificate dated 21.08.2023 is annexed as Annexure R8.

30. That thereafter the respondent offered the possession of the Unit to the complainants on 06.09.2023. It is pertinent to mention that vide letter dated 06.09.2023 regarding the offer of possession, the complainants were asked to make the requisite payment based on the Statement of Final Dues and complete the documentation required to enable the Respondent to initiate the process of physical possession of the unit, however the complainants never turned up to take the possession of the unit.
31. That the complainants willingly and voluntarily did not take possession of the unit or remit the balance sale consideration. The respondent had duly incorporated the compensation waiver in the offer of possession dated 06.09.2023. It is pertinent to mention herewith that the actual received from the Complainant is Rs.29,91.878/- (Rupees Twenty Nine Lakhs Ninety One



Thousand Eight Hundred and Seventy Eight Only), wherein the Respondent had already credited compensation including GST waiver, cost escalation, delay compensation @10.70% of Rs.23,69,183 (Rupees Twenty Three Lakhs Sixty Nine Thousand One Hundred and Eighty Three Only) in favour of the Complainant. Further, the Respondents had sent an email dated 16.02.2024 as Reminder of Unit Ready for Physical Possession after completing all the documentary and financial formalities but the Complainant failed to take the possession. A copy of the offer of possession dated 06.09.2023 is annexed as Annexure R9. A copy of email dated 16.02.2024 is annexed as Annexure R10.

32. That it is the Complainants who failed to take possession and make the payment towards the due instalment demanded with the offer of possession. That in turn, the Complainants filed a complaint before the I.d. Authority for the reliefs of DPC and contesting the allied charges. As stated above, gave a detailed finding on the levy of the charges as per calculation criteria prescribed in an order dated 09.10.2018. Thereafter, in compliance with the said order, the Respondent issued a letter dated 08.11.2023 as per the findings of the authority. That it is pertinent to note that the Respondent in compliance with the order dated 09.11.2018 has credited the delayed compensation amount of Rs. 20,84,576 along with the GST waiver. That it is mentioned herein that an amount of



Rs. 4,02,704 had already been given to the Complainants during the execution proceedings. Net payout amounting to Rs 5,79,729/- has also been paid to the complainants vide cheques sent to the complainants along with the compliance letter and the said has been received by the complainant as is evident from order dated 06.02.2024 in execution no. 1353/2019. Copy of the compliance letter and order is annexed as Annexure R-11 and R-12.

33. That the complainants were bound to make the payment of interest. This obligation has been noted under Section 19 (6) and 19 (7) of RERA Act,2016.
34. In addition to the basic sale price, the complainants also undertook to pay additional charges such as EDC and IDC, Cost Escalation, increase in area, stamp duty, etc. The complainants also had the obligation to pay if there is any increase in rates by the government and the rate according to the change is super area. The FBA was voluntarily executed by the complainants.
35. That the terms of the FBA are sacrosanct and binding on the Parties. The FBA being a contract of a private nature was executed between the parties after a thorough reading and understanding of the terms and conditions mentioned therein forming an integral part of the contract/ agreement. Thus, executing FBA binds the parties by the terms and conditions enunciated therein.



36. That the respondent had placed on record No objection Certificate dated 04.03.2025 on record vide document filed in registry on 04.04.2025. It is stated that complainant has taken the physical possession of his unit on 03.04.2025.

37. That vide order dated 07.04.2025 the respondent was directed to file an affidavit categorically specifying the heads under which charges have been levied upon the complainant along with the detailed breakup, the compliance whereof is being done vide an application filed in registry on 22.07.2025.

D. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

38. I.d. counsel for the parties reiterated the submissions made in their written pleadings/reply.

E. ISSUES FOR ADJUDICATION

39. Whether the complainants are entitled to the relief sought or not? If yes, the quantum, thereof.

F. OBSERVATIONS OF THE AUTHORITY

40. Firstly, the issue of maintainability of a second complaint before the Real Estate (Regulation and Development) Act, 2016, founded on the same unit and between the same parties, must be examined through the settled doctrines of



finality of adjudication, res judicata (including constructive res judicata), and the doctrine of election of remedies; all of which are principles rooted in public policy to prevent multiplicity of proceedings and conflicting decisions.

41. In the ordinary course, once a competent authority has adjudicated upon a dispute, particularly where the issues, reliefs, and cause of action substantially coincide, a subsequent complaint would be barred by the doctrine of res judicata under Section 11 of the Code of Civil Procedure, which, though procedural, embodies a rule of universal application. The Supreme Court has consistently held that a party cannot seek "a second bite at the cherry" on the same cause of action; in *Ireo Grace Realtech Pvt Ltd v. Abhishek Khanna*, 2021 AIR 437, it was emphasised that where concurrent remedies exist, once a party elects and pursues one remedy, it cannot subsequently agitate the same grievance afresh. The principle extends not merely to matters actually decided but also to those which ought to have been raised in the earlier proceedings, thereby attracting the doctrine of constructive res judicata. In order to elucidate the latter issue, if a complainant demands possession in a complaint, the same is awarded and he obtains it, the issue is settled. Now, at a later stage, he cannot file a fresh complaint asking for delay interest. That is a concomitant issue, indelibly connected to the original one. Hence it cannot form the basis of a fresh complaint. The law ordinarily expects that all consequential and ancillary reliefs arising from the same cause of action, including delay interest or compensation



for delayed possession, ought to have been claimed in the same proceeding. The failure to do so attracts the doctrine of constructive res judicata, as embodied in Explanation IV to Section 11 of the Code of Civil Procedure. The Hon'ble Supreme Court in *Forward Construction Co. v. Prabhat Mandal (Regd.)* (1986) 1 SCC 100, authoritatively held that matters which "might and ought" to have been raised in earlier proceedings are deemed to have been directly and substantially in issue, and cannot be reagitated subsequently. Similarly, in *Gurbux Singh v. Bhooralal*, (1964 7 SCR 831), the Court underscored that a plaintiff cannot split claims arising from the same cause of action and pursue them piecemeal in successive proceedings. In the above example, the doctrine of election would also operate, inasmuch as the complainant, having elected to pursue a particular relief structure in the earlier proceedings, cannot subsequently reconfigure the lis.

42. However, the bar is not absolute. A subsequent complaint may be entertained where the earlier adjudication does not constitute a final decision on merits, or where a distinct or continuing cause of action arises. If the earlier complaint was dismissed on technical grounds, or liberty was expressly granted to file afresh, the embargo of res judicata would not apply. Further, where the reliefs sought in the subsequent complaint are qualitatively different, i.e. consequences arising post-adjudication, the complaint may survive scrutiny.



43. Thus, the governing test is whether the second complaint is, in substance, a re-litigation of the same lis, or whether it is founded upon new facts. If it falls in the former category, it must be rejected at the threshold in deference to judicial finality; if in the latter, the Authority would be justified in entertaining it, for the law does not foreclose legitimate grievances arising from subsequent causes.

44. The actual position herein is that complainants had initially filed complaint no. 178/2018 titled as Ankur Mehan & Surbhi Mehan vs BPTP Ltd involving primarily issue/relief of possession and delay interest. Reliefs sought in said complaint are reproduced below for reference :-

a. *That the respondents be directed to offer the possession of allotted flat No. K-503 in Tower K as assured complete in all respects and thereafter to execute the conveyance deed of the allotted flat firstly by giving delayed compensation from the date it was due in terms of agreement and thereafter claim the balance sale consideration of 5% and other permissible legal charges and to hand over the physical possession of the flat with all amenities and facilities as assured at the time of booking and thereafter.*

b. *That the possession of the allotted flat be given forthwith without any further delay and without raising any unjustifiable and unsustainable demand as the respondents were to hand over the physical possession of the allotted flat complete in all aspects as agreed within a maximum period of 42 months and which period comes to an end on 31.01.2013. Thus, the natural corollary of the same is that the complainants are not liable for any escalation cost for a period beyond on 31.01.2013. Suffice it to submit that even as per of the Flat Buyer's Agreement there is no reference to escalation cost being charged from the complainants.*

c. *That the respondents be directed not to raise any demand from the complainants until and unless registry and conveyance deed of the*

allotted flat is being executed in accordance with Flat Buyer's Agreement and without raising any unsustainable and unjustifiable demand.

d. That the illegal demand of the new and higher incidence of tax under Goods and Service Tax (GST) be not raised and claimed by the respondents from the complainants, for the sole reason that new regime of taxation under the Goods and Service Tax Act came into force in the year 2017 i.e. during the delayed period and this new incidence of tax is higher than the earlier applicable tax. Had the complainants be allotted the flat within the stipulated period of 42 months then they would have been liable to pay the lower tax @ 12.5% where the same product under new tax regime of GST falls under the higher taxable slab of 18%. The complainants cannot be fastened with the liability which has resulted due to acts and omissions of the respondents and the complainants were not at fault in this regard. Claiming this new and higher incidence of tax from the complainants would amount to giving premium to the respondents for their various acts of Commissions and Omissions.

e. That the respondents be directed to give the benefit of delayed possession to the complainants @ Rs. 5 per sq. ft per month till the actual possession is given and taken thereafter alongwith interest.

f. That the complainants be also awarded interest of every month of delay possession, till the actual handing over of the possession.

g. That all the demand of money and taxes etc. shall not be exceed beyond 31.01.2013 i.e. when the period of 42 months is completed, as the complainants are not liable for making any payment for delayed period of possession and the sole responsibility of the same as well of other taxes/charges for delayed period is of the respondents only.

h. That the respondents be directed to provide all the facilities and amenities as assured and promised to the complainants.

i. That the complainants have planned their various personal, family and social events/functions on the basis of the timely delivery of the possession with a hope that those memorable and cherish life moments shall be celebrated at their new home. This Hon'ble Authority may kindly direct the respondents to pay compensation to the complainants for causing mental agony, harassment, pain, sorrow and loss of precious time.

j. That the respondents be directed to compensate the complainants on account of rent being paid by the complainants to the tune of Rs.

16,000/- PM, as they are compelled to live in rented accommodation on account of delayed possession. The respondents are liable to pay this compensation from the date of delayed possession till actual possession is given and conveyance deed is registered.

k. That the complainants are also paying the monthly instalment of Rs. 15,975/- per month alongwith the interest on account of home loan, the respondents be directed to compensate the complainants for the same.

l. That the respondents be also directed to refund the enhanced EDC amount of Rs. 3,30,018.96/-, which have been got deposited from the complainants and later on the same has been stayed by the Hon'ble Court. The respondents have illegally retained that amount and have not returned the same. The respondents be directed to refund the said amount alongwith the interest to the complainants.

m. That in case the respondents are not in position to hand over the possession of the allotted flat as assured and complete in respect then the complainants be refunded there whole amount alongwith interest @ 18% PM.

n. Grant any other relief, which this Hon'ble Authority may deem fit and proper in the peculiar facts and circumstances of the instant case. "

45. Aforesaid complaint was decided by the Authority vide its order dated 09.10.2018. Relevant part of the order is reproduced below for reference:-

"All other facts of this matter are similar to the facts of the bunch matter decided by this Authority with lead case Complaint No.113of 2018-Madhu Sareen Vs. BPTP Ltd. All the complaints in this bunch matter are hereby disposed of with further directions that when offer of possession is given by the respondents to the complainants, it shall be accompanied by a statement of accounts which in turn shall be prepared keeping in view the principle laid down by this Authority in Case No.113of 2018-Madhu Sareen Vs. BPTP Ltd. The views expressed by respective Members in that judgment, however, shall stand as they are. Disposed of."

46. In complaint no. 113/2018 titled as Madhu Sareen vs BPTP Ltd, Authority had already decided the issue of increase in super area, cost

escalation, GST, EDC&IDC and FEDC. Respondent was further directed to re-calculate the demands and to issue a fresh statement of accounts. In case of non-satisfaction of the revised statement of account, the complainants were given liberty to approach again. Relevant part of the order is reproduced below for reference:-

*“As a consequence of the above orders the Annexure-A annexed with offer of possession letter dated 21.03.2018 is hereby quashed to the extent so ordered. **The respondents are directed to recalculate the amounts payable by the complainants in accordance with the aforesaid directions and issue them a fresh offer of possession along with statement of accounts. If the complainants are satisfied with the fresh statement of accounts, the fresh demands made by the respondents they shall deposit the same within 30 days of the receipt of offer of possession. If they are not satisfied, they will have a right to approach this Authority again.”***

47. In the present case, since liberty was expressively provided as above, therefore the new complaint in question is being adjudicated in the present.

48. Following the first decision, the complainants initially filed execution complaint bearing no. 1353/2019 titled as Ankur Mehan & Anr. Vs BP1P Ltd pending for hearing on 16.07.2026. During pendency of the said execution complaint, respondent had issued offer of possession with statement of account in compliance of order under execution on 06.09.2023. Occupation certificate had been received on 21.08.2023. Said offer was not acceptable to complainants due to the faulty/illegal (as claimed by complainants) statement of accounts annexed with it. Present complaint has been filed challenging the demands

along with request for quashing the offer of possession on the basis of illegal demands itself. As such, the issue of illegal demands has already been adjudicated by the Authority in complaint no. 113/2018 decided on 09.10.2018.

In case of non-satisfaction that too particularly qua the re-calculation of the demands only, the fresh complaint in hand is maintainable. Any of the fresh demand/issue will not be adjudicated at this stage.

49. Authority in order dated 16.07.2018 passed in complaint no. 113/2018 had ordered to re-calculate the impugned demands. Comparative chart of the demands in terms of its adjudication by the Authority and re-calculation as provided by respondent is discussed in the table below for ready reference:-

Sr. No.	Demands	Adjudication in Complaint no. 113/2018	Disputed complainant complaint no. 543/2024	by in no.	Amount/justification reflected by the respondent in its statement of account attached with offer of possession dated 06.09.2023
1.	Increase in Super Area	Accordingly, as per provisions of the flat buyer agreement reproduced above, the super area could be changed to the extent of 15%. In the present case the super area has been increased from 1306 sq. ft. to 1402 sq. ft. which represents an increase of about 7.5%, therefore, the change in super area and the demand made in accordance with that is covered by the flat buyer agreement. The respondent, therefore, is entitled to charge for the same at the agreed rates. This, however, will remain subject to the	Area has been increased from 1128 sq. ft to 1232 sq. ft. Respondent demanded additional Rs 2,10,304/- for the same. No supporting document supplied by respondent to show that the area sanctioned at the time of entering into the agreement and the time of offer of possession		Clause 1.13 and 1.10 is referred by respondent in its application filed in registry on 22.07.2025.

		condition that the flats and other components of super area in the project have been constructed in accordance with the plans approved by the department/competent authorities. To the extent the of the enhancement in super area is found not to be in accordance with the approved plans, the respondent will not be entitled to charge for the same. The respondent shall send a detailed and reasoned communication to the allottees stating therein the details of increased super area. A fresh challenge before this Authority can accordingly be made by any party if they so desire.	is different.	
2.	Cost Escalation	The question that arise before this Authority is whether the cost escalation should be allowed up to the deemed date of possession i.e. 06.11.2014 or up to actual date of offer of possession i.e. 21.03.2018. Admittedly, almost entire sale consideration was paid by the complainant to the respondents up to the year 2012. No default on the part of the complainant in making payment to the respondents has been alleged with any substantive evidence. Admittedly, the project has been delayed by over 4 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 15.01.2011 up	Rs 7,33,040/- -No basis has been supplied by respondent as to how the cost escalation has been calculated. -Complainant is not liable to pay any amount towards cost escalation.	Rs 1,82,138/- Cost escalation waiver given by respondent as per sheet attached by respondent in its application filed in registry on 22.07.2025.

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to the deemed date of delivery of possession after grace period i.e, 06.11.2014. No escalation in cost can be allowed after 06.11.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant. Now, comes the issue of the basis of calculating the cost escalation. The prices of steel, cement and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the actual escalation in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed. The dispute is whether CPWD or CIDC table should be adopted. CPWD is a public works department of the Central Government. It is presumed that they factor in all facts and circumstances while revising cost index of various materials. This Authority, therefore, orders that the CPWD table shall be followed to calculate escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession. These dates may vary in each individual case being disposed off through this common order. The respondent will recalculate the

		cost of escalation on the basis of above principle and communicate the revised escalation in cost to the complainants. Further, these calculations will be made only in respect of increase in the cost beyond initial 10% because 10% increase has already been accounted for in the basic cost charged from the buyers.		
3.	Power Back up installation charges	Accordingly, this being a clear stipulation made in the flat buyers agreement that PBIC @ Rs.25,000/- per KVA will be payable, the demand of Rs.1.25 lakhs raised by the respondents in respect of the lead case, therefore, is justified. It shall be calculated at the same rate in respect of all other cases.	Not disputed in pleadings.	
4.	Cost of Electrification & STP charges	The ordinary meaning of buying an apartment in a licensed and developed colony means and implies that the allottees when move into their apartments it will be electrified, it will have water supply and its effluents will be treated in accordance with the prevalent law. The additional charges proposed to be levied in this regard under ordinary circumstances would not be justified. However, since this is a specific provision of the agreement and both the parties have agreed and signed the same, the complainants are duty bound to pay to the respondents for these facilities. The respondents however shall convey to the complainants the actual cost	Not disputed in pleadings.	

incurred in electrification and installation of the STP, and prorata distribute those costs amongst all the apartments in the colony. The actual pro-rata cost to be worked out in respect of each apartment only shall be charged by the respondents. The basis of such calculations should also be conveyed to the complainants. Further, the costs in these regards shall be calculated only upto the deemed date of possession of the apartments.

5. GST

Admittedly, the delivery of the apartment has been delayed by more than 4 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the respondent in delivering the apartments, the incidence of GST should be borne by the respondent only. It is also observed that the amount of GST which is being demanded may not actually be leviable on the apartments purchased by way of construction linked payment plans. The respondents would be well advised to take the opinion of GST experts about the quantum of the tax leviable in the situation in

Complainant is not liable to pay any fresh incidence of tax applied after the deemed date of possession. Thus, the demand of **Rs 1,56,368/-** is liable to be set aside.

Rs 90,271/- GST Waiver, given by respondent as per sheet attached by respondent in its application filed in registry on 22.07.2025.

		which the complainants are placed. That advice of the experts may form a part of the record of the respondent for use in future.	
6.	Service Tax	Regarding Service Tax, advice of a service tax expert should be taken about the quantum of service tax payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartments. In accordance with the advice of the experts whatever service tax is payable up to the deemed date of offer of possession shall be demanded by the respondents and accordingly will be paid by the complainants.	Not disputed in pleadings.
7.	VAT	Regarding the Value Added Tax, an advice of the tax expert should be obtained and communicated to the complainants along with detailed justification thereof. Whatever amount is worked out by the taxation expert in this regard shall be paid by the complainants.	Not disputed in pleadings.
8.	Preferential location charges and club membership charges	The demand on account of the preferential location charges accordingly is justified. It shall, however, be calculated in accordance with the rates provided in the aforesaid clause. Sub clause (e) of Clause 2.1 provides that car parking charges @ Rs.1,50,000/- per car parking slot shall be charged. The demands in this	Not disputed in pleadings.

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		regard made by the respondents vide their letter dated 21.03.2018, therefore, is justified.		
9.	Club Membership Charges	Regarding club membership charges, the club is an important component of an apartment complex. Usually the construction of the club is done with the help of contribution from the buyers. If the full club has come into existence, and the same is operational or is likely to become operational soon the demand of Rs.50,000/- shall be discharged by the complainants. However, if the club building is yet to be constructed, the respondents should prepare a plan for completion of the club and demand money from members in instalments up to the date of completion of the club	Not disputed in pleadings.	
10.	EDC&IDC	Regarding the external development charges & IDC a specific provision has been made in sub clause (a) of clause 2.1 of the agreement by incorporating a provision regarding Development Charges. The term Development Charges used in this clause has been defined in clause 1.17 of the agreement. As per the provisions of the agreement External Development Charge and IDC is payable by the complainant. The complainants have been making payments in this regard in the past also. In the lead case Rs.1,96,004.50 has been demanded by the respondent vide letter dated	Demand was not accompanied by any supporting document showing the demand of Rs 442.40 per square feet by the government. Respondent has overcharged the complainant on account of IDC. The IDC Payable in terms of the rate fixed by the government per square feet is Rs 294.66 whereas respondent has charged Rs 442.40 per square feet	Rs 1,69,008.25/- (clause 2.1 (a) referred) reflected by respondent as per sheet attached by respondent in its application filed in registry on 22.07.2025.

		<p>21.03.2018 towards "External Development Charges and IDC." The External Development Charges have to be paid to the State Government for providing variety of external services. The IDC, however, is to be used by the developer for providing services within the colony. It would be appropriate to direct that the respondents shall separate the demands being made on account of EDC and IDC. The basis of calculation of the EDC also shall be conveyed by the respondent to the complainant.</p> <p>Accordingly, the due payable EDC charges as per the calculations shall be paid by the complainant to the respondent for paying to the State Government Authorities. Separate communication with regard to IDC shall be given by the respondent to the complainant specifying therein the reasons for charging the same.</p>	<p>towards EDC in the name of government.</p>	
11.	EEDC charges	<p>Regarding the enhanced external development charges (EEDC) the matter is sub-judice before the Hon'ble Punjab & Haryana High Court as to whether the State is justified in levying EEDC. It is ordered that if any amount towards EEDC has already been collected by the respondent, the same shall either be deposited with the State Government or it shall be kept in a separate fixed deposit. If Hon'ble High Court</p>	<p>Return the amount of EEDC collected at the rate 292.57 per square feet to be paid as and when the lis pending in the Hon'ble High Court regarding charging of enhanced EEDC is decided. True copy of the affidavit filed by the Department of</p>	<p>Rs 3,30,019/- reflected by respondent as per sheet attached by respondent in its application filed in registry on 22.07.2025.</p>

	<p>decides against deposition of the EEDC, then the said amount shall be refunded to the complainants; and if the court decides that EEDC is to be paid to the State Government then the respondent shall deposit the same with the State Government. If the money collected on account of EEDC has already been deposited with the State Government, its details will be conveyed to each of the complainants. If no money has been collected as EEDC and the Hon'ble High Court declares it as payable in future then each allottee will deposit the same proportionately.</p>	<p>Town and Country Planning dated 23.06.2023 pertaining to the present project in the context of EDC/EEDC is enclosed as Annexure A/9. Affidavit clearly states that the entire EEDC is due and nothing has been deposited by the respondent with the government.</p>	
12.	Stamp Duty Charges	Dealt below in para no. 44 of this order.	

50. Actual possession of the unit has been taken by complainants on 03.04.2025. Now, complainants are disputing stamp duty charges stating that deemed date of possession was in the year 2013. Complainant is not liable to pay the stamp duty charges of 2023. Respondent is liable to pay the differential amount between the rates applicable in the year 2013 and 2023. In respect of stamp duty charges, it is observed that said charges were not objected at the time of initial filing. It does not find mention in the disposal order. *At this stage, complainants cannot raise a fresh issue. Moreover, the stamp duty charges are agreed to be payable by complainants by virtue of clause 6.4 of agreement*



which reads as *'The stamp duty, Statutory charges and registration charges and incidental charges for the execution and registration of the conveyance deed or any other documents required to be executed shall be solely borne by the purchaser'*.

51. In respect of the disputed demand, Authority observes as follows:-

A. Demand for increased area- In respect of area, Authority had specifically held in the complaint no. 113/2018 as follows:-

*"Accordingly, as per provisions of the flat buyer agreement reproduced above, the super area could be changed to the extent of 15%. In the present case the super area has been increased from 1306 sq.ft. to 1402 sq.ft. which represents an increase of about 7.5%, therefore, the change in super area and the demand made in accordance with that is covered by the flat buyer agreement. The respondent, therefore, is entitled to charge for the same at the agreed rates. **This, however, will remain subject to the condition that the flats and other components of super area in the project have been constructed in accordance with the plans approved by the department/competent authorities.** To the extent the of the enhancement in super area is found not to be in accordance with the approved plans, the respondent will not be entitled to charge for the same. The respondent shall send a detailed and reasoned communication to the allottees stating therein the details of increased super area. A fresh challenge before this Authority can accordingly be made by any party if they so desire."*

Charging for increased area by the promoter was permitted on basis of fulfillment of two pre-requisites; first, is that increased area must not exceed 15% as specified in buyer's agreement. Second, said increase must be calculated only in terms of compounded approved plans. The ratio of increase, i.e. 9.21% is covered within limit prescribed in buyer's agreement. However, the second condition i.e. calculation of this increase

is not evidenced through the approved plan. No such plans have been presented by the respondent. Occupation Certificate had been received by the respondent on 21.08.2023 and thereafter, offer of possession was made to complainants on 06.09.2023 raising the demand for increased area. However, the basis for this increase i.e. the approved plans were never presented to Authority by the respondent. Therefore, a mere number cannot ipso facto allow the respondent to charge for increased area. Hence, amount raised by respondent for the increased area is not justified and complainants are not liable to pay the same.

B. Demand of cost escalation-In respect of cost escalation charges,

Authority had in the complaint no. 113/2018 as follows:-

"The question that arise before this Authority is whether the cost escalation should be allowed up to the deemed date of possession i.e. 06.11.2014 or up to actual date of offer of possession i.e. 21.03.2018. Admittedly, almost entire sale consideration was paid by the complainant to the respondents up to the year 2012. No default on the part of the complainant in making payment to the respondents has been alleged with any substantive evidence. Admittedly, the project has been delayed by over 4 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 15.01.2011 up to the deemed date of delivery of possession after grace period i.e. 06.11.2014. No escalation in cost can be allowed after 06.11.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant. Now, comes the issue of the basis of calculating the cost escalation. The prices of steel, cement and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the actual escalation in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed.

The dispute is whether CPWD or CIDC table should be adopted. CPWD is a public works department of the Central Government. It is presumed that they factor in all facts and circumstances while revising cost index of various materials. This Authority, therefore, orders that the CPWD table shall be followed to calculate escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession. These dates may vary in each individual case being disposed off through this common order. The respondent will recalculate the cost of escalation on the basis of above principle and communicate the revised escalation in cost to the complainants. Further, these calculations will be made only in respect of increase in the cost beyond initial 10% because 10% increase has already been accounted for in the basic cost charged from the buyers."

In this regard, as per builder buyer agreement's clause no. 12.11, the respondent was to justify that price of steel, cement and other construction materials got increased more than 10% upto the due date of handing over of possession. Respondent failed to place any information or evidence in this regard. Moreover, the respondent had already delayed the project by 9 years. Accordingly, amount for cost escalation is not justified and complainants are not liable to pay the same.

C. Demand for GST charges- It is observed that GST came into picture in July 2017. Whereas the deemed date of possession was in year 2013. Allottee should not bear the burden of tax which has been introduced after expiry of deemed date of possession. Complainant allottee shall not pay the amount of GST charges.

D. Demand for EDC & IDC charges-It is observed that Authority had directed the allottees to pay the same. Respondent was however directed

to supply the justification/basis of charging the same. Respondent has not supplied the justification of charging (at what rate it has been charged) the same till date. In such a situation, the excess demanded by the respondent stands quashed.

E. Demand for EFDC charges- It is observed that prayer of refund was made initially in complaint no. 178/2018. Same has already been adjudicated in its disposal order dated 09.10.2018. As such, issue of EFDC is still pending before Hon'ble High Court of Punjab and Haryana. Parties are directed to act in accordance with directions passed in order dated 16.07.2018 in complaint no. 113/2018.

52. In view of aforesaid discussion, the Authority concludes that the offer of possession dated 06.09.2023 issued by the respondent to the complainants was a valid offer of possession as it was duly supported with Occupation Certificate dated 21.08.2023. Complainants had raised objections towards the illegal demands. Said objections/re-calculations has already been dealt with at length in para 43 and 44 of this order. Thus, the entitlement of delay interest of complainants remains restricted only upto valid offer of possession i.e. 06.09.2023 only. Relief clause (i), (ii), (iii), (iv) and (v) stands dealt with.

G. DIRECTIONS OF THE AUTHORITY

53. 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. Respondent is directed to issue fresh statement of accounts to the complainant within next 45 days in terms of directions issued in this final order.
- ii. Complainants are also directed to accept the statement of account within next 30 days of receipt of statement of account, if they conform to the above directions with payment of outstanding due amount, if any.
- iii. Complainants will remain liable to pay balance consideration amount, if any, to the respondent.
- iv. There is no more any liberty granted to any party to approach this Authority again vis-à-vis these complaints. The liberty granted, referred to Supra was not eternal and was not on the subjective dissatisfaction of the complainants.

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


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


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PARNEET S. SACHDEV
[CHAIRMAN]