



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1068 of 2024
Date of filing.:	29.08.2024
Date of first hearing.:	15.10.2024
Date of decision.:	30.04.2026

Sharanjit Kaur W/o Sh. Mohinder Pal Singh
R/o BD 109, Janakpur,
New Delhi-110058.

.....COMPLAINANT

VERSUS

1.M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001
2. M/S BPTP Parklands Pride Limited
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001

....RESPONDENTS

CORAM: Parneet Singh Sachdev

Chairman

Dr. Geeta Rathee Singh

Member

Present: - Mr. Akshat Mittal, Counsel for complainants through VC
M. Lakshita, Proxy for Adv. Tejeshwar Singh, Counsel for the
respondents through VC

ORDER (PARNEET S. SACHIDEV-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, Sector 75-89, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-203-SF, 1510 sq. ft.

5.	Date of Booking	21.09.2009
6.	Date of builder buyer agreement qua initially allotted unit H-46-SF	19.02.2011
7.	Date of letter for change of unit	15.01.2013
8.	Date of builder buyer agreement qua initially allotted unit P1:-203-SF	14.08.2014
9.	Due date of possession(24 months)	14.08.2016
10.	Possession clause in BBA	<p>Clause 5.1</p> <p><i>Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of the floor buyers agreement</i></p>


		<i>or sanction of building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).</i>
11.	Basic sale consideration	₹ 27,79,101.72/-
12.	Amount paid by complainant	₹ 38,14,498/-
13.	Offer of possession	20.06.2023
14.	Occupation Certificate	02.03.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the complaint are that the complainant applied for booking of floor no. H-46-SF, 1418 sq. ft. by paying Rs 3,00,000/- on 21.09.2009. Builder buyer agreement for said unit was executed between the parties on 19.02.2011. It was assured that the possession of the same would be

handed over to the complainant within 24 months of the booking (21.09.2009) i.e. latest by 20.09.2011.

4. That, however witnessing no progress at the project site when the respondent was prompted by the complainant, in January 2013 during discussions in the office of the respondent, the respondent accepted that the existing unit i.e. H-46-SF is in a tower which can take extra ordinary time for completion and lured the complainant into accepting the change of unit from the existing H-46-SF to PI-203-SF. In this regard, letter dated 15.01.2013 qua confirmation of change in the unit had been issued and is being annexed as Annexure C-1.
5. That the new unit, i.e. unit no. PI-203-SF was offered for a sale consideration of Rs 26,42,961.72/- minus discount of Rs 1,36,140/- as mentioned in clause 2.4 of the agreement. In total, complainant has paid an amount of Rs 38,14,498.13/-. Payment receipts are annexed as Annexure C-3.
6. That, it is pertinent to mention that again after the change of unit vide confirmation dated 15.01.2013, the complainant had to make numerous requests for the execution of the new floor buyer's agreement pertaining to the new unit i.e. PI-203-SF. However, the same was only executed on 14.08.2014, i.e. after 19 months of the booking of the new unit.



7. That it is pertinent to reiterate that the new booking was confirmed on 15.01.2013 and again the complainant was assured possession within 24 months, i.e. by 14.01.2015. However, vide the agreement dated 14.08.2014, the promoter has again manipulated the clause pertaining to the due date for offer of possession and now the possession was to be offered within 24 months w.c.f. the date of agreement. Taking into account the clause in the floor buyers agreement, the respondents were duty bound to handover the possession of the flat in question latest by 13.08.2016.
8. That the respondent would not be entitled to the grace period of 180 days as the same could only be availed of for the specific purpose of applying and obtaining the occupation certificate. Copy of floor buyer agreement is annexed as Annexure C-4.
9. That at this juncture, it is also pertinent to highlight that the floor buyer's agreement entered into between the parties is unilateral and arbitrary in character, with there being harsh and exorbitant penalties imposed upon the allottee and unequal clauses in the sense of imposing the minutest penalties on the respondent company.
10. That it is extremely pertinent to mention that the complainant has been duly protesting the continuing delay and the respondent has been revising the timelines, however even the revised timelines and assurances for offer

of the possession have all been lapsed and the complainant has time and again been constrained to raise her grievance.

11. That for the first time, the offer of possession was ultimately made by the respondent to the complainant vide letter dated 20.06.2023 qua the unit in question i.e. PE-203-SF. Copy of offer of possession is annexed as Annexure C-5. Said offer was not accompanied by the Occupation Certificate. Further, adding to the illegalities and malafides on the part of respondent, it is submitted that respondent has been demanding illegal and exorbitant charges prior to and now vide the said offer of possession letter dated 20.06.2023 which are as follows:-

- i. Demand qua Enhanced EDC-Respondent had already demanded and made the complainant to pay a hefty sum towards Enhanced E.D.C. That it is hereby submitted that the demand qua enhanced E.D.C. has been declared illegal by this Hon'ble Authority in various judicial pronouncements. This Hon'ble Authority has time and again observed that no promoter can charge under the head of Enhanced E.D.C. from the allottee, and in cases where the same has already been taken by the promoter, the promoters have been directed to refund the same to the allottee.

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- ii. Demand qua E.D.C. & I.D.C. Further, vide the letter dated 20.06.2023, the respondent has again, demanded a sum of Rs. 3,54,910.32/- towards EDC and IDC, without justification and once the amounts qua EDC etc. already stand paid.
- iii. Over charging of I.D.C. in violation of Government notice: It is submitted that the respondent company has been raising excessive demands towards I.D.C., whereas as per the approved norms and circulars of the department, the I.D.C. can only be charged @ Rs. 231.68/- per sq. yard.
- iv. Demand qua Electrification and STP charges: It is submitted that the respondent company demanded an amount of Rs. 82,935.74/- towards Electrification and STP Charges, whereas the said charges are already part of the E.D.C. charges.
- v. Interest: It is submitted that the letter dated 20.06.2023 mentions a sum of Rs. 36,190/- towards "Interest" to be given by the complainant to the respondent. However, it is extremely important to mention that the complainant has never made any late payment, and has infact been given discount qua timely payments. As such, the said demand is absolutely illegal, unjustified and must be quashed.

- vi. Club Membership Charges: It is submitted that the said letter dated 20.06.2023 contains a demand of Rs. 15,000/- towards the CMC (Club Membership Charges). It is hereby submitted that there is no club existing at the project site, and the said charges would only be applicable, if at all, the club is constructed and made operational at the project site, and further, if the complainant is interested in the club facility. As such, the club and CMC charges would be illegal, unjustified, pre-mature and liable to be quashed.
- vii. Cost Escalation Charges: The respondent is demanding a sum of Rs. 1,60,180/- towards cost escalation. It is hereby submitted that the respondent has miserably delayed the offer of possession, and even as per the latest floor buyer agreement dated 14.08.2014, the respondent was bound to handover the possession by 13.08.2016. As such, the cost escalation, if any, has arisen only due to the delays on part of the respondent, and the burden thereto should not be put on the shoulder of the complainant. As such, the said charges are illegal, unjustified and liable to be set aside having regard to the peculiar facts of the matter at hand.
- viii. Electricity Connection charge: the respondent has demanded a sum of Rs. 25,000/- towards electricity connection charges.

It is hereby submitted that the complainant wishes to obtain the electricity connection directly from the DHBVN (Dakshik Haryana Bijli Vitran Nigam Ltd.) and therefore is requesting for the said charges to be waived off, which are even otherwise exorbitant in nature.

- ix. G.S.T V.A.T., Service Tax: The respondent has raised exorbitant demand qua Service Tax, Value Added Tax as well as Goods and Services Tax, with Rs. 1,20,640/-, 28,004/-, 82,567/- being demanded respectively. It is humbly submitted that the possession has been delayed at the behest of the respondent company, and the burden qua taxes, particularly GST should not fall upon the complainant allottee.
- x. Payment of dues to Business Park Maintenance Services Pvt. Ltd.: The respondent company vide letter dated 20.06.2023 had also directed the complainant allottee to make the payment to BPMS Pvt. Ltd., which is the maintenance agency of the respondent company. It is submitted that the complainant has not signed any kind of contract with the said company and as such, is not obligated to make any payment to the same.



- xi. Electricity Charges: It is extremely important to highlight that without handing over the physical possession of the unit, the respondent company is also sending invoice-cum-Bill of supply', demanding electricity charges. The copy of the invoice/bill dated 26.07.2024 is being annexed herewith as Annexure C-6. It is also important to highlight that the same has been raised by Business Park Maintenance Services Pvt. Ltd. on their letter head. It is reiterated that the complainant has not entered into any contract with the said company.
- xii. Size: It is submitted that the complainant had booked a unit admeasuring size 1418 sq. ft., however, vide the offer of possession letter dated 20.06.2023, the respondent, in Annexure A thereto has mentioned that the tentative super area of the unit was 1418 sq. ft. and the final super area is 1510 sq. ft. The initial unit i.e. Unit II-46-SI⁷ was promised to be of 1418 sq. ft., as also apparent from the perusal of the statement of account dated 08.11.2010 pertaining to the said old unit i.e. II-46-SI⁷, annexed herewith as Annexure C-7.

Further, the Statement of Account as on 29.06.2024 as fetched by the complainant, is also reflective of certain amounts charged and being demanded by the respondent, copy whereof is annexed herewith as Annexure C-8.

12. That most importantly, the said offer of possession dated 20.06.2023, does not contain the delayed possession charges to be paid by the respondent company to the complainant allottee for the miserable delay in offer of the possession, which is still continuing. The Hon'ble Punjab and Haryana High Court has also, vide order dated 19.09.2022 in RERA Appeal titled Emaar India Ltd. Vs Nishat Hasin Khan @ Nishant Hasin Khan and Ors., observed "The 2016 Act has been enacted to regulate the real estate sector. The apartment buyer cannot be expected to, at the first instance, pay the wrongly demanded amount in order to take delivery of possession. The compensation for the delayed delivery of possession as been statutory defined" Copy of the order dated 19.09.2022 is being annexed herewith as Annexure C-9.
13. That the said offer of possession letter dated 20.06.2023, was duly contested by the complainant allottee, who was constrained to issue letter/mail dated 07.07.2023 to the respondent company, citing illegalities in the offer of possession. The same was however in vain, as the grievance of the complainant still stands tall and has not been redressed by the respondent. Copy of letter/mail is annexed as Annexure C-10.
14. That as such, being highly aggrieved and frustrated by the entire circumstances and faced by the miserable attitude of the respondents, which needless to mention, has rendered the complainants completely shattered and heartbroken, the complainants are left with no other option

but to approach the Hon'ble H.R.E.R.A. Panchkula, as a last resort, for directions to the respondent to immediately offer the possession of the unit in question, alongwith delayed possession charges, compensation etc. Thus, the present complaint.

C. RELIEF SOUGHT

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

- i. To direct the respondent to immediately hand over the legal, valid and uncompromised actual physical possession of the unit in question ie. Unit No. PE-203-SI, to the complainant allottee coupled with the occupation certificate.
- ii. To direct the respondent promoter to compensate the complainant for the continuing delay in the legal offer and handing over of the possession of the unit to the complainant, by paying delayed possession charges as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, as amended upto date, with effect from the due date of possession till the actual and legal handing over of possession of the unit complete in all respects, on the entire amount deposited by the complainant.

- iii. To set aside and quash the exorbitant demands qua 'electrification & S.T.P', Cost Escalation Charges, Enhanced E.D.C., Interest, Club Charges, Club membership Charges, Electricity Connection Charges, G.S.T., overcharging of E.D.C., VAT, Service Tax etc., the same being uncalled for, illegal and excessive. The respondent may kindly be directed to refund/return the amounts, already taken qua E.E.D.C. and any other aforesaid charges, alongwith interest to the complainant.
- iv. To direct the respondents to pay a sum of Rs. 50,00,000/- on account of grievance and frustration caused to the complainants by the miserable inhuman attitude, deficiency in service on part of the respondent and for causing mental, physical, financial stress and agony to the complainant, along with interest from the date of filing the present complaint till its realization.
- v. The registration, if any, granted to the Respondent for the project namely, "Park Elite Floors", Parklands, situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.



- vi. To impose penalty on the respondents under section 61 of the Act for contravention of the provisions of the Act.
- vii. The complainant may be allowed with costs and litigation expenses of Rs 2,50,000/-
- viii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint, in favour of the complainant allottee.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 03.03.2025 pleading therein:

- 16. That the respondent no. 2 is a mere confirming party to the agreement. No specific reliefs have been sought from the respondent no. 2. Neither the respondent no. 2 is a necessary party nor a proper party to the present case, hence, its name should be deleted from the array of parties.
- 17. The complainant had approached the respondent no. 1 (herein after respondent) for booking a residential unit in the project of the respondent namely 'Park Elite Floors' being developed at Faridabad. Consequently, booking form was executed by the complainant on 06.06.2009.
- 18. Then the complainant was provisionally allotted unit no. II-46-SF on the second floor was tentatively allotted based on the tentative layout plan vide allotment letter dated 24.12.2009. Unit of complainant was re-

allotted to PE-203-SF tentatively admeasuring 1510 sq. ft. Unit of complainant was changed from unit no. II-46-SF to unit bearing no. PE-203-SF. Complainant duly consented to the same. Copies of allotment letter dated 24.12.2009 and unit change letter dated 15.01.2013 are annexed as Annexure R-2. Complainant had also executed an undertaking and affidavit duly agreeing to the tentative nature of the unit and layout plan.

19. A builder buyer agreement was executed between the parties in respect of the unit no. PE-203-SF in question on 14.08.2014. As per clause 5.1 of the agreement possession of the floor was to be delivered within a period of 24 months from the date of execution of the builder buyer agreement or sanction of building plan whichever is later along with a grace period of 180 days. At this stage, it is submitted that the benefit of grace period has to be given as has also been considered by the I.d. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022** that if the grace period is mentioned in the clause, the benefit of the same is allowed. Further the due date was also subject to the incidence of force majeure circumstances and the timely payment by the complainant. That the construction of the unit was deeply affected by such circumstances, the benefit of which is bound to be given to the respondent.



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) was regulated. Reference in this regard may be taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said project became scarce. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders in fact inter-alia continued till the year 2018.

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

by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan. Copies of the demand letters, payment receipts and reminders letters are annexed as Annexure R5(colly).

22. That the due date of possession is subject to date of sanctioning of building plans. The building plan was approved on 02.03.2023 and thus the due date for delivery of possession works out to 02.09.2025. That in light of the same, the due date of offer of possession has not yet passed.

23. That respondent is a well known developer who has established a distinguished name in the market and is known for providing best services to its allottees. Being the customer centric company, the respondent gave various discounts and rebate to its allottees. Bearing same principles in mind the respondents at the time of booking the unit gave discount on timely payment discount of Rs 88,566/- and inaugural discount of Rs 1,36,140/-.

24. That the respondent no. 1, completed the construction of the project and applied for Occupation Application vide an application and successfully attained the Occupation Certificate dated 02.03.2023. It is respectfully submitted that once an application for a grant of Occupation Certificate is submitted to the concerned statutory authority. Time period utilized for granting the occupation certificate is liable to be excluded from the time



period utilized for implementation of the project. Copy of the occupation Certificate is annexed as Annexure R-6.

25. Respondent no. 1 offered the possession of the unit to the complainant on 20.06.2023. Vide said offer complainant was asked to make the requisite payment based on final statement of dues but the complainant has not turned up to take the possession of the unit. Respondent no. 1 has also credited the compensation amount of Rs 67,573/-. Copy of offer of possession is annexed as Annexure R-7. Moreover, it is submitted that all demands raised alongwith offer of possession are covered well within the ambit of buyers agreement.

26. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the floor buyer agreement dated 14.08.2014, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.

27. That it was agreed between the parties that the complainant shall take possession of the unit within 30 days of issuance of offer of possession to the complainant and shall make payment of balance amount. Complainant



is duly obligated to make payment in terms of Section 19 (6) and 19(7) of RERA Act,2016.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

28. I.d. counsel appearing on behalf of both parties reiterated the submissions as made in their pleadings.

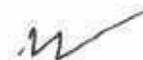
F. ISSUES FOR ADJUDICATION

29. Whether the complainant is entitled to possession of the booked unit along with delay interest and other charges in terms of Section 18 of Act of 2016? If answer to any of the above is a Yes, the quantum thereof.

G. OBSERVATIONS OF THE AUTHORITY

30. As per record, respondent no. 1 in its written reply has stated that present complaint pertains to a unit bearing no. PE-203-SF, admeasuring 1510 sq. ft in the real estate Project "Park Elite Floor" being developed by the Respondent No. 1. The Respondent No. 2 is merely a confirming party to the agreement. Moreover, no specific relief has been sought from respondent no. 2. Hence, its name should be deleted from the array of parties.

Perusal of facts and submissions reveals that complainant has paid all amounts and carried out transactions with respondent no. 1 only. However, in builder buyer agreement the obligation of delivering



possession to complainant was imposed upon both the respondents, i.e. Seller (BPTP) and Confirming Party (BPTP Parklands Pride Ltd) vide clause 5.1 of builder buyer agreement which is as follows:-

Clause 5.1 to agreement

Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the 1st floor to the Purchaser(s) within a period of 24 months from the date of execution of the floor buyers agreement or sanction of building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).

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

31.As per facts and circumstances, complainant in this case was initially allotted unit bearing no. II-46-SI², measuring 1418 sq. ft. in the project



being developed by the respondents namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 24.12.2009. Builder buyer agreement was also executed between the parties for the said unit on 19.02.2011. However, after a gap of three years approximately, the unit of the complainant was shifted from unit no. 11-46-SF and allotted a different unit bearing no.PI:-203-SF, measuring 1510 sq.ft vide unit change letter dated 15.01.2013. Thereafter, both parties executed a builder buyer agreement in respect of the unit bearing PI:-203-SF on 14.08.2014 for a basic sale consideration of Rs 27,79,101/- against which the complainant has paid a total amount of Rs 38,14,498/-. It is the contention of the complainant that the respondents have failed to complete the project and thus delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking possession of the booked unit along with delay interest.

32.As per clause 5.1 of the builder buyer agreement, possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of builder buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority.



33. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The respondent in its reply has submitted that the building plans got approved on 02.03.2023 thereby pushing the deemed date of possession to 02.09.2025. However, the respondent has not filed a copy of the same to substantiate as to whether the said date of approval is for original building plans or revised building. Thus, the contention of the respondent to calculated deemed date of possession from the date of sanction of building plans is rejected. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. It is a matter of fact, that the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. As per the settled principle no one can be allowed to take advantage of its own wrong. *Accordingly, this*

grace period of 180 days cannot be allowed to the promoter. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 14.08.2016.

34. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondents have attributed this delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondents have failed to substantiate how such issues directly impacted the respondents.

35. As such, '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.*

36. As such, respondents have failed to adequately prove the extent to which the construction of the project in question got affected. There is no documentary evidence on record in support of plea/claim of force majeure conditions. *Hence, plea of the respondents stands rejected.*

37. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 14.08.2016. However, respondents failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 20.06.2023. Said offer of possession was issued after receipt of occupation certificate on 02.03.2023. It is the submission of the respondents that the offer of possession was issued after completion of all development works and receipt of occupation certificate, thus the complainant should have accepted the said offer of possession. However, the complainant failed to do the same.

38. During the course of arguments, learned counsel for the complainant had submitted that the complainant had filed the captioned complaint on 29.08.2024 seeking possession of the unit in question along with delay

interest since the respondent had failed to complete the construction of the project within stipulated time. However, the said offer of possession was unacceptable to the complainant since the complainant did not agree with the demands raised vide said offer of possession.

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 20.06.2023 and observes as follows:

- i. With regard to the cost escalation charges of ₹160,180/-, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 14.08.2016. The respondent issued a letter offering possession on 20.06.2023, despite the deemed date of possession being in 2016, resulting in delay of 7 year. Additionally, the offer dated 20.06.2023 was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which are unjust since the 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, but in this case, the delay was solely caused by the respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainants, having already endure 7-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 respondent on account of cost escalation charges is hereby rejected and set aside.

- ii. With regard to the demand raised by the respondents on account of club membership charges of ₹ 15,000/-, Authority observes that club membership charges can only be levied when the club facility is fully operational with all amenities. In this case, it is essential to note that the Occupancy Certificate (OC) for the floor has been obtained by the respondent on 02.03.2023. 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 evidence to negate the claim of the complainant. *Since the club has not been constructed, the demand raised by the respondent on account of club charges for a non-existent club is also set aside.*
- iii. With regard to the demand raised by the respondents on account of GST, Authority is of the view that the deemed date of possession in this case works out to 14.08.2016 and charges/taxes applicable on said date are payable by the complainant. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in delivery of possession has already been attributed on the part of the respondents. *Therefore, the complainants are not liable to pay GST charges.* Charges raised on account of *VAT and service tax* are payable to



the Government. A bare perusal of clause 2.6 of the agreement reveals that the complainant has agreed to pay the said charges. *Therefore, the same are to be levied by the respondent and payable on the part of the complainant as per law.*

- iv. With regard to demands raised on account of Electricity connection charges and Electrification and STP charges, it is observed that vide clause 2.6 sub-clause 'i' and 'j' of the buyer's agreement dated 14.08.2014 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 2.6 and *hence are payable on the part of the complainant.*
- vi. With regard to the final area of the unit which is chargeable from the complainant, it is noted that as per the builder buyer agreement executed between the parties, the area of the floor was 1510 sq. ft. however, ultimately as per the occupation certificate dated 02.03.2023, the area of the floor comes to 1217.72 sq. ft.. Authority observes that respondents are entitled to charge only for the area of the unit which is actually to be



provided to the allottee at the time of handing over of possession. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code, 2017 which clearly establishes that lift, mummy, balcony, parking, services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of the project. However, cost of construction of all such structures which is not included in FAR can be burdened upon total cost of the unit by the respondent but; cannot be charged independently making it a chargeable component of the unit. Hence, the respondent is directed to re-calculate the price of the floor according to the final area of the unit i.e 1217.72 sq.ft

- vii. With respect to demand of EEDC charges, it is observed that issue of said charges is still pending before Hon'ble High Court of Punjab and Haryana, Chandigarh in CWP no. 5835 of 2013 titled as 'Balwan Singh and others vs State of Haryana and others'. Parties are directed to act accordingly.
- viii. With respect to interest of Rs 36,190/-, it is observed that respondents have not provided any basis/justification as to how this figure had been arrived at. Neither any documentary evidence has been attached in support of it. Hence, same is quashed.



ix. With respect to dues towards maintenance company, it is observed that separate maintenance agreement needs to be signed between the purchaser and Seller or maintenance agency as per clause 1.22 of agreement. Clause is reproduced below for ready reference:-

Maintenance agreement shall mean an agreement to be executed between the purchaser and the seller or the maintenance service provider, nominee of the seller in the standard format prescribed by the seller or its appointed agency or nominee (maintenance service provider) which is applicable and binding for all the owners and occupants of the floors in the project Park Elite Floors. The agreement shall be executed for the purposes of upkeep and regular maintenance of the colony as a whole as the floor derives its prestige, esteem and appeal from the ambience and high standard maintained at the colony and the proper upkeep and maintenance is an inseparable aspect of such prestige, esteem and appeal of the floor.

As such, maintenance charges are payable by complainant only after execution of maintenance agreement. Said maintenance charges will become payable w.e.f valid offer of possession i.e. 20.06.2023.

40. The facts set out in the preceding paragraphs demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 33 of this order, respondents should have delivered possession of the floor by 14.08.2016. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on 20.06.2023. Along with said offer of possession respondents had issued a detailed statement of account of payable and

receivable amounts which has been challenged by the complainant on account of several discrepancies that have been already adjudicated in para 39 of this order. Said offer of possession was a valid offer of possession duly issued after receipt of occupation certificate on 02.03.2023. 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. Therefore, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 14.08.2016 till the date of valid offer of possession i.e 20.06.2023. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

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

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%;

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”

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

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

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till valid offer of possession 20.06.2023 (in ₹)
1.	27,49,588.39	14.08.2016	20,35,569/-
2.	312906.61	05.09.2017	1,95,820/-
Total:	30,62,495/-		22,31,389/-

43. For the purpose of calculation of interest, the amount paid by the complainant upto valid offer of possession i.e. 20.06.2023 has been taken into consideration.

44. It is pertinent to mention that in the captioned complaint, complainant has received timely payment discount from the respondents as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainant and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainant. Although it is true that this discount is an act of good will



on the part of the respondent but complainant cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

45. The complainant is also seeking relief of compensation for mental agony and deficiency in services along with litigation cost. For this the complainant- allottee is entitled to claim compensation under Sections 18(3) of the RERA Act which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. Also, the complainant is seeking compensation for mental pain, agony, harassment and depression caused to the complainant and litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned



in Section 72. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the aforementioned reliefs.

46. It is noteworthy to observe that complainant in relief clause (v) and (vi) has sought revocation of registration and imposition of penalty. Perusal of complaint file reveals that complainant has not mentioned the grounds/reason for claiming said relief. These reliefs are neither pressed nor argued during arguments. Also, there is no section in the RERA Act that allows such reliefs u/s 31. Hence, these are not allowed.

H. DIRECTIONS OF THE AUTHORITY

47. The Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. Respondents are directed to pay upfront delay interest of Rs 22,31,389/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.
 - ii. The respondents shall issue a fresh statement of account to the complainant incorporating therein the principles laid down in this order within 30 days of uploading of this order.
 - iii. Complainant shall accept the offer of possession within next 30 days of the receipt of fresh statement of accounts. Complainant will remain

liable to pay balance consideration amount, if any, to the respondents at the time of actual/physical offer of possession.

- iv. The respondents shall not charge anything from the complainant which is not part of the agreement to sell
48. **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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PARNEET SINGH SACHDEV
[CHAIRMAN]