HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2712 of 2023**
Date of filing.:	**21.12.2023**
Date of first hearing.:	**23.01.2024**
Date of decision.:	**16.07.2026**

Kshitiz Arora,
S/o Late Sh. Virender Kumar Arora,
R/o House no. 49, Sector-09
Shastri Nagar, Meerut,
Uttar Pradesh ....COMPLAINANT

VERSUS

M/s BPTP Ltd,
M-11, Middle Circle, Connaught Circus,
New Delhi-110001 ....RESPONDENT

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

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Present: - Mr. Anurag Mishra, Counsel for complainant through VC

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

<u>ORDER</u> (PARNEET S. SACHDEV-CHAIRMAN)

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-350-GF, 1371 sq. ft.
5.	Date of Allotment	06.10.2011

6.	Date of builder buyer agreement	22.09.2012
7.	Due date of possession (24 +6 months)	22.03.2015
9.	Possession clause in BBA (Clause 5.1)	*"Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party or any restraints / restrictions from any courts / authorities but 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 other charges and having complied with all provisions, formalities, documentations, etc., as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to offer the handing over the physical possession of the Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of the Floor Buyer's Agreement. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of twenty four (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with*

		respect to the building consisting of the three independent residential floors including the Floor. The Seller/Confirming Party shall give a Notice of Possession to the Purchaser(s) wherein the Purchaser(s) will be granted 30 days period to complete the formalities and payment of amount demanded. The Purchaser(s) on completing the payment of the amount demanded shall become eligible for execution of the Conveyance Deed and taking over the possession of the Floor from the Seller. In the event the Purchaser(s) fails to make the complete payment of the amount demanded or fails to complete all the documentation and necessary formalities as informed vide Notice of Possession within 30 days of the date of such communication, the Purchaser(s) shall be deemed to be custodian of the Floor from the date indicated in the notice of possession (Deemed Possession) and the said Floor shall remain at the risks and costs of the Purchaser(s) thereafter."
10.	Total sale consideration	₹ 26,44,399/-
11.	Amount paid by complainant	₹27,37,073/-
12.	Offer of possession	23.10.2023 with demand of ₹ 9,35,758.24/- (inclusive of stamp duty charges of ₹ 2,50,000/-)

13.	Occupation Certificate	09.11.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint that the respondent in the year 2009 approached the complainant and offered to invest in its upcoming project 'BPTP Parkland Elite Floors' and lured the Complainant with various benefits and facilities that shall be provided to the Complainant while booking in the said project Based on the assurances of the Builder, the Complainant booked a flat bearing no. PE-350-GF in block PE in the year 2009 admeasuring a super area of 1022 Sq. Ft. for a total consideration ofRs. 19,53,200- However, in the year 2011, the area of the said flat was increased unilaterally by the Respondent from 1022 sq ft to 1371 sq ft without giving any valid reason to Complainant. Accordingly, the total sale price was increased from a sum of Rs. 19,53,200/- to Rs. 25,41,600/-, EDC, IDC, PLC, Club Membership charges were to be paid in addition to the basic sale price which came to Rs.29,89,300.47/- as final consideration.
4. That the respondent issued Allotment Letter dated 06.10.2011 qua the said flat and accordingly confirmed the allotment of the said unit to the Complainant. Copy of the Allotment Letter dated 06.10.2011 is annexed herewith as Annexure-1.

5. That the Builder Buyer Agreement was executed on 22.09.2012 between the builder and the Complainant. As per Clause 5.1 of the said agreement, the Respondent was required to handed over in a period of 24 months from the date of execution of the Builder Buyer Agreement with a grace period of 180 days as provided under same clause 5.1 of the said agreement for filing and pursuing the grant of occupation certificate from the concerned authority. However, to utter shock of the Complainant no work has been initiated even today on the site.

6. Even after repeated emails communications, physical meetings and oral requests the Respondent was not able to handover the said unit to the Complainant as the Respondent did not carry out the construction work on time. Copy of Builder Buyer Agreement dated 22.09.2012 is annexed herewith as Annexure-2.

7. That the Complainant had made timely payment of all the installments from time to time however, he has yet not received the possession of the flat. It is pertinent to mention that the Complainant has paid a total sum of Rs. 26,38,131/- which is around 95% of the total sale consideration in following manner to the Respondent. Statement of Account and payment receipts are annexed herewith as Annexure-3.

8. That the respondent/Builder always advertised itself to a very ethical business group that lives upto the commitments in delivering its housing projects as per the promised quality and timelines however, in the present

case the Complainant the respondent has totally failed on all its assurances and has still not handed over the possession of the said flat to the Complainant. The Complainant had visited the site recently in November 2023 and have witnessed the on-ground scenario which clarifies that no work is on going on the site and the same is still not ready for possession. Further, to add to the miseries of the Complainant the site in-charge of the Respondent updated that the STP plant is not functional and there is no electricity connection yet installed on the site.

9. That, recently on 23.10.2023,respondent has issued Offer of Possession to the Complainant whereby they state that the flat is ready for possession and has raised a unwarranted and exemplary demand of Rs.9,35,758.24/-. Copy of the said Offer of Possession dated 23.10.2023 is annexed herewith as Annexure-A4. It is pertinent to state that in the said Offer of Possession the respondent has raised at entry F-Cost Escalation @ Rs. 106/- per sq ft amounting to a sum of Rs. 1,45,435/-, the said demand is totally faulty and illegal and is against the terms of the said Builder Buyer Agreement. It was the duty of the respondent to timely handover the possession of the said flat however, the respondent has delayed the handover of the said flat for more than 9 years now without any valid reason and now burden of the delay caused due to the acts of the respondent is being imposed upon the Complainant by way of raising such illegal demand on account of cost escalation. Such illegal demands

are untenable and are against the terms of the said Builder Buyer Agreement and therefore are required to be quashed as the same is detrimental to the interests of the Complainant.

10.It is pertinent to mention that the Respondent has offered the possession of the flat without having procured Occupation Certificate for the building. Further, the Complainant has confirmed by the site engineer who has been representative of the Respondent, that there is no Electricity Connection or Water Supply connection yet procured for the site and thus the Respondent is in complete non-compliance of the building bye laws. To the utter shock of the Complainant the site engineer also confirmed the project has no permanent STP installed at the site yet and for now the Respondent has arranged a sewage suction truck in every 10 to 15 days and the said truck shall get the sewage cleared from every individual unit. The Complainant fails to understand that after paying such huge amount and waiting for more than 9 years the Respondent is offering possession of the unit without basic amenities and thus the Complainant should be duly compensated for such harassment. It is pertinent to state that the Statement of Accounts annexed by the Respondent alongwith its offer of possession dated 23.10.2023 clearly specifies that the Respondent has charged huge sums on account of "Electrification & STP Charges", "Electricity Connection Charges" and the said amount has been duly paid by the Complainant. However, the Respondent has not provided any facility to the said effect on ground and has offered the possession of the unit without having such basic amenities.

11. That further reading of the said Offer of Possession clarifies that in Annexure E of the said letter the Respondent has annexed a declaration that once the possession is taken over the Respondent shall charge STP and Electrification charges @ Rs. 895/- per sq yard on each floor. The said demand is also illegal and detrimental and against the terms of the Builder buyer Agreement. It is pertinent to state that the calculation sheet annexed by the Respondent alongwith the Offer of Possession already covers "Electrification and STP Charges" and also "Electricity Connection Charges" at therefore such duplicate charges cannot be demanded from the Complainant and the same is clear case of duping the genuine homebuyers.

12. That there is no sign of construction of the club on the site till date however, the offer of possession has charged Rs. 15,000/- on account of Club Membership charges. Such demands are not only illegal and fraudulent but are also detrimental to the interests of the Complainant. Further, the notes of the offer of possession also states that Balance club membership charges has not been billed and the same shall be billed upon completion of the club. Thus, it is admitted position that the construction of the club has not been completed and at such stage there is no occasion for the Respondent to raise any demand on the said account.

13. That on 23.10.2023 the respondent has also raised a Tax invoice whereby the Complainant is advised to make payment of Admin charges @ 16,520/-per unit and Advance Maintenance Charges of a sum of Rs. 29,120/-starting from 21.02.2024 to 20.02.2025 alongwith applicable GST @ 18%. Such illegal demands are not only against the terms of the Builder Buyer Agreement but are totally against the RERA laws. Further, vide the said demand notice the respondent has also demanded to pay a sum of Rs.27,420/- on account of interest free security deposit for the maintenance charges. The Respondent vide the said demand notice is trying to extract maintenance for future term without having handed over the possession of the said units. Further, the date stipulated to be 21.02.2024 is taken by the Respondent on some fictitious basis and it only states that the respondent would not be able to handover the possession of the said unit till the said date. Copy of the Tax Invoice dated 23.10.2023 is annexed herewith as Annexure-A5.

14. The Complainant is eager to take the possession of his flat however the Respondent is required to make the payment of the penalty for delayed possession of the said flat alongwith the loss that has been suffered by the Complainant.

15. Thus, the Complainant has suffered huge loss due to all the above mentioned reasons and also suffered delayed possession for which the

Complainant is required to be compensated adequately in the interest of justice.Thus, the present complaint.

C. RELIEF SOUGHT

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

    i. To handover the possession of the Flat bearing no PE-305-GF along with all the agreed amenities as per the terms of the BBA executed between the parties,

    ii. To direct the Builder to make the payment of delay penalty on account of delayed possession from dated of execution of the BBA till date of handing over the possession along with interest @ 18% per annum

    iii. Quash illegal demand letter dated 23.10.2023 to the tune of Rs. 1,45,435/- (entry no. F) under the head of Cost escalation (@ Rs. 106 per sq ft) as the said demand is illegal and totally misconceived,

    iv. Quash illegal Tax invoice dated 23.10.2023 to the tune of Rs. 73,060/- as the said demand is illegal and totally misconceived,

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v. To direct the Builder to make payment of Rs. 1,00,000/- on account of legal cost that has been suffered by the Complainant

vi. Any other relief that this Hon'ble authority deems fit and appropriate in the interest of justice

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 22.01.2024 pleading therein:

17. That the complainant expressed their interest and willingness to purchase a unit in the project of the respondent known under the name and style of "Park Elite Floors". Accordingly, an application/ booking form was executed by the Complainant. Complainant was not allotted any unit in the 1st phase of allotment in the project of the Respondent hence, on the request of the Complainant for consideration of his name in the 2nd phase of allotment. It is pertinent to mention that the Complainant consented for the allotment of a plot of tentative super build up area of 1371 sq. ft. Consequently, the unit, residential independent floor bearing no. PE-350-GF, on Ground Floor tentatively admeasuring 1371 sq. ft super area was allotted on the basis of the tentative layout plan. The copies of the Booking Form dated 26.05.2009, consent form and the Allotment Letter dated 06.10.2011 are annexed and marked as Annexure R1(Colly).

18. That thereafter, the parties mutually, willingly, and voluntarily entered into a Floor Buyer's Agreement on 22.09.2012. 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. It is pertinent to mention that an inaugural discount of Rs 1,02,800 was also given to the Complainant. A copy of the Floor Buyer's Agreement dated 22.09.2012 is annexed and marked as Annexure R2.

19. That the Complainant took loan against the unit in question from Indiabulls Housing Finance Ltd. for which permissions to mortgage was issued by the Respondent. The Complainant and the Respondent entered into a Tripartite Agreement on 02.05.2013. It is pertinent to note that the liability of repayment of the loan amount was on the Complainant themselves, as per clause 3 of the Tripartite Agreement. The Respondent only has liability to pay the EMI. A copy of the Tripartite Agreement dated 02.05.2013 is marked and annexed as Annexure R3.

20. That as per the FBA, the possession was proposed to be handed over within a period of 24 months from the date of execution of the Floor Buyer's Agreement along with a grace period of 180 days. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022 that if

the grace period is mentioned in the clause, benefit of the same is allowed.

21. That the subjective due date comes out to 22.03.2015. However, this due date was subject to incidence of force majeure circumstances and timely payment by the complainant.

22. That the construction of the unit was also hampered due to other circumstances beyond the control of the company the benefit of which is bound to be given in accordance with clause 5.1 read with 14 of the FBA.

23. 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 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. 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.

24. That additionally, even before normalcy could resume the world was hit by COVID-19 Pandemic. It led to further challenges to the project with no available labour, contractors etc for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 10-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020.By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to

prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.

25. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. Therefore, it is safely concluded that the said delay of 350 days in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. That from the facts indicated above and documents appended, it is comprehensively established that a period of 350 days was consumed on account of circumstances beyond the power and control of the Respondent No. 1, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated come within the meaning of force majeure in terms with the Agreement.

26. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the Unit. The copies of the demands letters, payment receipts, and reminders are annexed as Annexure R-4.

27. That despite innumerable hardships being faced by the Respondent, the Respondent completed the construction of the Project and applied for the Occupation Certificate vide an application before the concerned Authority and successfully attained the Occupation Certificate dated 09.11.2023. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority to Respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the Respondent does not exercise any influence in any manner whatsoever over the same. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for implementation of the project. Copy of Occupation Certificate dated 09.11.2023 is attached as Annexure R-5.

28. That the Respondent offered the possession of the Unit to the Complainant on 23.10.2023. It is pertinent to mention that vide letter dated 23.10.2023 regarding offer of possession, the Complainant was asked to make the requisite payment based on the Statement of Final Dues and complete the documentation required to enable the Respondent to initiate the process of physical possession of the unit, however, the Complainant never turned up to take the possession of the Unit. Complainant willingly and voluntarily did not take possession of the Unit

or remit the balance sales consideration. A copy of the offer of possession dated 23.10.2023 is marked and annexed as Annexure R6.

29. That the Respondent earnestly requested the Complainant to obtain possession of the unit in question and further requested the Complainant to completing all the formalities regarding delivery of possession. However, the Complainant did not pay any heed to the legitimate, just and fair requests of the Respondent. All requests of the Respondent to take the possession of the Unit fell on deaf ears of the Complainant. The instant complaint is preferred in complete contravention of Complainant's earlier representations and documents executed in this regard.

30. That it was the obligation of the complainant to take possession of the unit as per clause 5.2 of the FBA executed between the parties, however, the complainant has failed to adhere to their obligations and have filed this frivolous complaint.

E. ADDITIONAL DOCUMENTS FILED BY THE PARTIES

37. **Complainant had filed rejoinder in registry on 23.05.2025** denying the pleadings of respondent and reiterating the allegations/submissions made in complaint. Further, the complainant has several objections to the alleged offer letter 23.10.2023.Few of the concerns in brief are as follows:-

- **Delay in handing over of possession**-the actual date of delivery should have been 02.09.2015 ad not beyond. Reasons for delay mentioned by respondent are completely wrong and denied and has no bearing on present case.

- **Cost escalation-**The reasons for the cost escalation of Rs. 1,45,435/- are solely due to the delay in the construction and development of the project by the respondent and the complainant cannot be burdened with the same. Such illegal demands are untenable and are against the terms of the builder buyer agreement.
- **Electrification and STP charges-**demand is illegal and detrimental to BBA. Duplicate charges cannot be demanded by respondent.
- **Electricity connection charges-** demand is illegal and detrimental to BBA. Duplicate charges cannot be demanded by respondent.
- **Club Charges-** Amount of Rs 15,000/- is charged, however, there is no sign of construction of club on the site till date. The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The respondents cannot collect charges for the services which are non-existent till date.
- **Tax invoice issued by maintenance company-**Respondent vide said demand notice is trying to extract maintenance for the future term without having handed over the possession of unit.

- **unilateral increase in area of the unit-** Respondent arbitrarily and without any justification had increased the area from 1022 sq. ft to 1371 sq. ft.

F.ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

41. Ld. counsel for complainant and respondent reiterated the submissions as made in their pleadings. In respect of deemed date of possession, ld. counsel appearing on behalf of both parties agreed to taking 24+6 months, i.e. upto 22.03.2015. Respondent has argued that delay interest be awarded till receipt of Occupation Certificate as there is only gap of 15-16 days between the offer of possession and receipt of occupation certificate or at maximum till 2 months after receipt of occupation certificate as per Section 19 of RERA Act,2016.

G. ISSUES FOR ADJUDICATION

42. 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.

H.OBSERVATIONS OF THE AUTHORITY

43. As per facts and circumstances, complainant in this case was allotted unit bearing no. PE-350-GF, measuring 1371 sq. ft. in the project being developed

by the respondents namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 06.10.2011. Builder buyer agreement was also executed between the parties for the said unit on 22.09.2012 for a basic sale consideration of ₹ 26,44,399/- against which the complainant has paid a total amount of ₹ 27,37,073/-. It is the contention of the complainant that the respondent has 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.

44. As per clause 5.1 of the builder buyer agreement, possession of the unit was to be delivered within 24 months from date of execution of builder buyer agreement along with grace period of 6 months. Complainant as well as respondent's counsel both at the time of arguments agreed that deemed date of possession is 22.03.2015.

45. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. The due date of possession in the present case is 22.03.2015. The claim of the respondent regarding exclusion of delay due to *force majeure* is now being examined. The respondent has claimed that extraordinary conditions caused the delay in construction i.e Bans by NGT order, Covid outbreak etc. Details of said periods is mentioned in the table below:-

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

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

47. 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."

48. 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.*

49. 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.***

50. In the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted for the period of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. However, with respect to other events, the respondent has failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all. Mere

pleading of force majeure conditions without fulfilling its obligations, cannot be allowed as discussed above.

51. Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid-19 is for 9 months, i.e. 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021. Covid-19, however, did not in any way enhance the date of handing of possession which is 22.03.2015 as mentioned by the Complainant. Nevertheless, Covid caused subsequent delay in completion. Therefore, a time period of 9 months is to be excluded from any delay interest calculation.

52. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 22.03.2015. However, respondent failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 23.10.2023 alongwith demand of ₹9,35,758/- (inclusive of stamp duty charges of ₹ 2,50,000/-). Occupation Certificate stands received on 09.11.2023. It is the submission of the respondent that the offer of possession was issued after completion of all development works and applying of occupation certificate, which was ultimately received just 15-16 days after offer on 09.11.2023, thus the complainant should have accepted the said offer of possession. However, the complainant failed to do the same.

53. Ld. counsel for complainant expressed his difficulty in accepting said offer as it was not supported with occupation certificate and was accompanied with disputed charges.

54. With regard to the contention of the complainant, the Authority has carefully examined the statement of account issued along with offer of possession dated 23.10.2023 and observes as follows:

i. With regard to the cost escalation charges of ₹1,45,435/- , it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 22.03.2015. The respondent issued a letter offering possession on 23.10.2023, despite the deemed date of possession being in 2015, resulting in delay of 8 years. Additionally, the offer dated 23.10.2023 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 endured an 8-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 09.11.2023. 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 respondent on account of Electrification and STP charges (₹ 68,317) and Electricity connection charges (₹ 25,000), it is observed that vide clause 2.6 sub-clause 'g', 'i' and 'j' of the buyer's agreement dated 22.03.2015 the complainant has agreed to pay these charges to the respondent. Since these charges are in consonance with the buyer's agreement complainant cannot shy away from its obligation of making requisite payments. *Hence, these chargers are payable by the complainant.*

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iv. 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 1203 sq. ft. (in offer of possession 1371 sq. ft.) however, ultimately as per the occupation certificate dated 09.11.2023, the area of the floor comes to 1069.51 sq. ft.. Authority observes that respondent is 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, mumty, 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 1069.51 sq.ft*

v. <u>With respect to invoice towards maintenance charges</u>, 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, in the 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 project. 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 standards 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 issued after receipt of occupation certificate.*

55. 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 44 of this order, respondent should have delivered possession of the floor by 22.03.2015. However, the respondent failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on 23.10.2023. 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 54 of this order. Said offer of possession was not supported with Occupation Certificate. Respondent had received occupation certificate on 09.11.2023.

56. It is the stand of complainant that respondent did not issue valid offer of possession till date so delay interest be awarded till actual handing over of possession. On the other hand, ld. counsel for respondent argued that at the time when offer of possession dated 23.10.2023 was made to the complainant, the unit was lying complete and occupation certificate stands applied. He requested that delay interest be awarded till grant of Occupation Certificate only. Perusal of file reveals that complainant had filed present complaint on 21.12.2023 by which time the occupation certificate had already been received, i.e, on 09.11.2023. Respondent had filed its reply in registry on 22.01.2024 wherein details of occupation certificate along with its copy is attached as Annexure R-5. In the case in hand, factual position is that offer of possession was issued by respondent to complainant on 23.10.2023, however occupation certificate for the unit in question was received by respondent on 09.11.2023. Said offer was not a valid offer of possession as it was not supported with occupation certificate. So, the complainant was not bound to accept the same and to pay outstanding amount raised alongwith offer of possession. Respondent has taken a stand that gap of 15 days between the offer of possession and date of occupation certificate be ignored and delay interest be awarded to the complainants only upto date of occupation certificate, i.e. 09.11.2023. In this regard, it is observed that

respondent has failed to substantiate his plea with proper documentary evidence and legal position prevailing under RERA Act,2016. Fact remains that respondent has not issued any possession letter to the complainant till date after receipt of occupation certificate. Complainant has got to know about receipt of occupation certificate only after filing of present complaint that too on receipt of reply. During pendency of complaint, respondent did not even bothered to issue proper offer of possession duly supported with occupation certificate. Moreover, the proviso to Section 18 of the RERA Act.2016 clearly entitles the allottee to receive delay interest till handing over of possession.

57. 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 22.03.2015 till the date of valid offer of possession to be issued by respondent supported with occupation certificate minus the force majeure period of COVID-19 period, i.e., 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021.*

58. 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 HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

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

59. 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.

60. 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 16.07.2026 (in ₹) excluding force majeure period				
			22.03.2015 DDOP or date of payment whichever later to 24.03.2020	25.03.2020 to 24.09.2020	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021	01.07.2021 or date of payment to 16.07.2026
1.	23,99,499.01	22.03.2015	1299279	No interest	133478	No interest	1307799
2.	20,981	28.11.2016	7530	No interest	1167	No interest	11435
3.	3,16,592.99	08.08.2018	55738	No interest	17611	No interest	172553
Total:	27,37,073/-		1362547	No interest	152256	No interest	1491787
			Total= 30,06,590/-				
			Monthly interest=24,296/-				

61. For the purpose of calculation of interest, the amount paid by the complainant as per receipts, i.e. ₹ 27,37,073/- has been taken into consideration.

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

63. The complainant is also seeking litigation cost of Rs 1,00,000/-. 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.

I. DIRECTIONS OF THE AUTHORITY

64. 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 pay upfront delay interest of ₹ 30,06,590/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Monthly interest of ₹ 24,296/- shall be payable for further delay.

   ii. The respondents shall issue a fresh offer of possession to the complainant alongwith statement of account 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 respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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

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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]

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PARNEET S. SACHDEV
[CHAIRMAN]

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

1. We, the undersigned have the privilege of going through the order authored by Hon'ble Chairman and are in complete agreement with the findings on all issues except exemption on account of force majeure and delay interest in captioned complaint.

2. Respondent haS pleaded that deemed date of possession was subject to the force majeure events such as NGT Bans and COVID-19. Details of said events have been summarized in the table below:-

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

Deemed date of possession in the present lead case is 22.03.2015. Therefore, question arises for determination as to whether any situation or circumstances which could have happened after this date, due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on the part of the respondent and the various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough for two fold reasons, firstly, as respondent had claimed that NGT orders passed in year 2016,2017 and 2019 have been one of the cause for delay in construction activity of the project. It is pertinent to mention here that respondent herein are in business of real estate sector and is well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondent considering all such factors. Moreover, any event that subsequently occurred in the year 2017 could not have hampered the deemed date/construction work that was to be completed till the year 2015. Secondly, respondent itself had promised to deliver possession of unit to complainant by 22.03.2015 so any delay if has occurred during completion of apartment, the respondent cannot burden it upon complainant. Complainant is not at fault for trusting respondent by depositing the amount to respondent in return of delivery of possession of unit. Therefore, now, the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

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

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

3. In view of aforesaid observations, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

4. In view of aforesaid observations, the complainant is entitled to delay interest ranging from deemed date of possession (22.03.2015) to the date of valid offer of possession made after obtaining occupation certificate from the competent authority in terms of Rule 15 of HRERA Rules,2017. Calculation of upfront delay interest (upto date of this order) alongwith monthly interest is incorporated in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e. 16.07.2026 (in ₹)
1.	23,99,499.01/-	22.03.2015	2935803/-
2.	20,981/-	28.11.2016	21840/-
3.	3,16,592.99/-	08.08.2018	271663/-
Total:	27,37,073/-		32,29,306/-
Monthly interest			24,296/-

5. Accordingly, parties are directed as follows:-

i. Respondent is directed to pay upfront delay interest of ₹ 32,29,306/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount, monthly interest of ₹24,296/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate. Maintenance charges will remain payable by complainant w.e.f valid offer of possession.

ii. Complainant is also directed to accept the possession within next 30 days of receipt of valid offer alongwith payment of outstanding due amount, if any.

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

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

....
NADIM AKHTAR
[MEMBER]