HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**587 of 2024**
Date of filing.:	**16.04.2024**
Date of first hearing.:	**01.07.2024**
Date of decision.:	**20.08.2026**

Manoj Kumar S/o Sh. Saket Bihari Sharma &
Nitu Singh W/o Sh. Manoj Kumar
Both R/o Village Bhelwa, PO Hasua,
District Nawada, Bihar-805103

....COMPLAINANTS

VERSUS

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

....RESPONDENT

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

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Chander Shekhar **Member**

Present: - Mr. Nitin Kant Setia, Counsel for the complainant through VC.

Mr. Hemant Saini, Counsel for the respondent.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

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

A. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

2. Facts of complaint are that the complainants had applied for booking of flat with the respondent by paying Rs 2 lacs in July,2009. Builder buyer agreement was executed between the parties on 30.10.2010 for flat no. E-704, having area of 906 sq. ft. in project-Park Elite Premium, Sector-84, Faridabad, Haryana.

3. That as per clause 3 of the agreement, the project was to be completed within a period of 36 months with a grace period of 180 days after the expiry of the said 36 months for obtaining occupation certificate. According to said clause possession ought to have been given in first quarter of 2013 even if the 180 days grace period is included. However,

the project was not completed and no reason much less than a reason sustainable in law was given and no occupation certificate had been granted by the competent authority. Copy of flat buyer agreement is annexed as Annexure A/1.

4. That the respondent started construction of the unit and started raising demands in terms of the construction linked plan opted by the complainant. Last milestone in the construction linked plan, i.e. casting of 9^{th} floor slab was achieved on 06.07.2011. Complainant cleared the said demand on 11.09.2012. From the above, it is clear that the construction from ground floor to ninth floor was completed between September 2010 and July,2011, i.e. 10 months. Despite completing the entire construction as envisaged in the construction linked plan within 10 months the respondent went in deep slumber thereafter and failed to complete the construction the sundry development jobs even in a period of 11 years.

5. That the complainant was forced to file a complaint before this Hon'ble Authority which was registered vide complaint no. 1070/2018. Respondent contested the said complaint by filing written statement before this Hon'ble Authority. The Hon'ble Authority allowed the complaint and quashed the offer of possession and directed the respondent to issue a fresh statement of account with a revised statement of account in terms of jugdement in complaint no. 113/2018. True copy

of judgment dated 22.09.2021 passed in complaint no. 1070 of 2018 is enclosed as Annexure A/4.

6. That the Hon'ble Authority had allowed the complaint by directing the respondent to issue statement of account in terms of principles laid down in its earlier judgment passed in complaint no. 113/2018 titled Madhu Sareen vs BPTP Ltd. Copy of judgment is annexed as Annexure A/5.

7. That the respondent failed to comply with judgment passed by this Hon'ble Authority. However, the respondent issued a revised statement of account dated 19.07.2023 and demanded a further amount of Rs 3,63,293/-, Respondent indicated an amount of Rs 6,33,462/- towards delay penalty payable by respondent to complainant. Delay penalty had to be calculated @10.45% on the total amount paid by the complainant in terms of judgment in Appeal no. 619/2021.

8. That the complainant replied to the revised statement of account and demanded component wise clarification on cost escalation, overcharging and non payment of EDC to the government, wrong calculation of increase in area, GST, difference in stamp duty and not calculating delay penalty.

9. That the statement of account issued by the respondent is one-sided, arbitrary, illegal, illogical and inflated only to cause wrongful loss to the

complainant. Statement of account is issued arbitrarily calculating the delay penalty which is not in terms of the principles laid down by this Hon'ble Authority and further by setting off the abysmally low delay penalty against illegal demands. Therefore, the impugned statement of account is illegal and is no significance. Headwise challenge to the adjustments made against specific heads are being dealt with as under:-

a. Cost escalation- Respondent had raised demand of Rs 5,77,745/- towards cost escalation which is unjustified and unreasonable. As per the agreement the project has to be completed and possession delivered in 2013-2014. There is no basis that has been supplied by respondent as to how the cost escalation has been calculated. Further, balance sheets of the company the budgeted cost for the entire project was Rs 148,38,07,000/-. As it will be revealed from the balance sheets of the company the cost actually incurred against the cost of material is same as the material cost budgeted at the time of start of project. Actual cost of material never exceeded the budgeted cost therefore, the complainant is not liable to pay anything against the purported cost escalation.

b. EDC, EEDC,IDC- That the respondent has demanded and collected Rs. 400813 from the complainant towards EDC and EEDC. The Department of town and Country Planning issued license #62 of

2010 to develop the project in question over the land measuring 11.09 acres sector 84 Faridabad, Haryana. As per the terms of the license and the agreement entered between the respondent and the state government as per clause 1(i) the respondent was to pay external development charges at the rate 139.00 lakhs per gross acre. Further in terms of clause 4 the respondent was to pay Rs. 20691300 (two crore six lakh ninety one thousand three hundred) towards infrastructure development charges. The builder buyer agreement was entered between the complainant and the respondent on 10.11 2010 and the development charges of Rs 150 per square feet was to be charged by the respondent from the complainant towards external development charges. The State government revised and finalized the external development charges from 139.00 lakhs to 232.84 lakhs per gross acre as per government memo dated 25 May 2011. The complainant paid an amount of Rs 250000/- on 27.06.2012 stating that the government has revised the EDC to 442.40 per square feet and therefore an additional amount of Rs. 292.57 per square feet was due and payable by the complainant the complainant immediately paid additional EDC@292.57 per square feet.

That the demand was not accompanied by any supporting document showing the demand of Rs 442.40 per square feet by the government. The respondent has overcharged the complainant on account of EDC. As per the demand by the government the EDC chargeable was Rs 232.84 lakhs per gross acre. As per the license the total area of the project is 11.094 acres. The total EDC leviable on the project is Rs. 258312696 (23284000 11.094). The total saleable area of the project is 876644 square feet the total demand of EDC is to be loaded on the total saleable area to arrive at per square feet charge. In the present case, the EDC payable in terms of the rates fixed by the government per square feet is rupees 294.66 whereas, the respondent has charged rupees 442.40 towards EDC in the name of government. The respondent has overcharged the complainant at the rate 142.29 per square feet. The amount of EDC paid in the year 2012 @ 292.57 Per Sq. Ft has been lying with the builder ever since as the same has not been paid to the State government. The Complainant is entitled for interest on the said amount for the period the builder has used the said money without depositing the same with the state government. In sum, the complainant submits that he is entitled for

(i) return of amount overcharged as EEDC along with interest;

(ii) interest on amount collected but not paid to the state government;

(iii) return the amount of EDC collected at the rate 292.57 per square feet to be paid as and when the lis pending in the Hon'ble High Court regarding charging of enhanced EDC is decided. The Govt. memo dated 25.05.2011 applicable on the present project is enclosed herewith as Annexure A/9. The true copy of the affidavit filed by the Department of Town and Country Planning dated 23.06.2023 pertaining to the present project in the context of EDC/EEDC is enclosed herewith as Annexure A/10. The affidavit clearly states that the entire EEDC is due and nothing has been deposited by the respondent with the Government. The true copy of the license for the project is enclosed herewith as Annexure A/11.

c. Increase in Area- As per the agreement the area allotted to the complainants was 906 sq. ft. The respondent has unilaterally and illegally shown the area to be increased to 966 sq.ft. and demanded an additional amount of Rs. 119073/- in the impugned statement of account. It is submitted that there is no supporting document supplied by the respondent to show the increase in the area. There is nothing provided by the respondent to show that the area sanctioned at the time of entering into the agreement and at the time of offer of possession is different. The sanctioned plan is of 906 sq. ft therefore, the complainant is not liable to pay for the purported increased area.

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

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

B. RELIEFS SOUGHT

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

i. Declare that the impugned statement of account dated 19.07.2023 (Annexure A-6) is non-est and illegal as it does not factor in the delay penalty as awarded by the Hon'ble Authority in its judgment dated 11.09.2018 in complaint no 186 of 2018 based on complaint no. 113 of 2018 in the case of Madhu Sareen versus BPTP and further setting off the illegal demands of cost escalation, increase in Area, Overcharging on account of EDC and EEDC, GST and revised rates of Stamp Duty with the delay penalty payable to the complainant.

ii. Declare that the complainant is entitled for monthly interest payable till actual handing over of possession;

iii. Direct the respondent to pay the monthly interest till actual handing over of possession;

iv. Quash the impugned statement of account dated 19.07.2023 (Annexure A/6) being illegal and against the provisions of The Real Estate (Regulation and Development) Act, 2016;

v. Direct the respondent to refund alongwith interest the amount overcharged from the complainant in the name of EDC and EEDC.

vi. Any other relief which the Applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

12. It is to be noted that the complainants had previously filed Complaint before the Ld. Authority bearing no. 1070 of 2018 seeking relief of Delayed possession charges and challenging the charges like cost escalation, enhanced EDC, club charges and GST. The present complaint is hence barred by the principle of res-judicata as the issues raised by the Complainants vide the present complaint has already been adjudicated and decided by the Authority in complaint no. 1070 of 2018. That the complaint no. 1070 of 2018 was disposed off vide order dated 22.09.2021. A copy of the order is already annexed with the Complaint. Thus, the rights between the parties were substantially, conclusively, and finally decided between the parties by the Ld. Authority. That after the complete adjudicating of the reliefs in a previous complaint, the filing of the present complaint is barred by the principle of Res Judicata. That once a matter is finally decided by a competent forum, no party can be permitted to reopen it in a subsequent

litigation. The principle essentially follows the latin maxim that "Res judicata pro veritate accipitur" to "A matter adjudged is accepted as true".

13. That in the previous complaint, the complainants sought the relief of DPC, alleged illegality of charges, i.e. cost escalation, enhanced EDC, Club charged and GST, and their rights were duly and completely adjudicated upon. The policy of law is to prevent multiplicity of proceedings and one party shall not be vexed again and again. That in such a circumstance, the present Complaint could not have been filed. Present complaint is barred by the principle of Res Judicata.

14. That complaint is barred under order II Rule 2 of the Code of Civil Procedure, 1908. As noted above, the complainants had filed a previous complaint in which the issues were decided between the parties. The issue regarding the increase in area and stamp duty was not raised by the Complainants by filing the previous complaint. Relief of stamp duty charges were never raised by the complainants vide the previous complaint therefore the same is barred by Order II Rule 2, CPC, 1908.

15. Additionally, at this stage, the complainants had also filed an execution petition seeking enforcement of claims of the previous order. Hence, the present complaint is barred and should not be entertained.

16. That the complainants 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 Complainants. A copy of the Booking form dated 22.07.2009 is annexed as Annexure R1.

17. Consequently, the complainants were provisionally allotted flat no. E-704, Tower E admeasuring 906 sq. ft., super built-up area was allotted on the basis of the tentative layout plan. A copy of the Allotment Letter dated 12.01.2009 is annexed as Annexure R2.

18. That thereafter, the complainants mutually, willingly, and voluntarily entered into a Flat Buyer's Agreement on 30.12.2010. At this stage, it is pertinent to highlight that the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the FBA. A copy of the Flat Buyer's Agreement dated 30.12.2010 is annexed as Annexure R3.

19. That it is pertinent to highlight that it was agreed between the Parties that the area of the Unit is tentative and subject to change, as also agreed under the FBA.

20. That the remittance of all amounts due and payable by the complainants under the agreement as per the schedule of payment incorporated in the agreement was of the essence. The demands were raised as per the agreed payment plan between the parties, however, the complainants defaulted in

making payment of the installments due timely. Copies of payment request letters and reminders are annexed as Annexure R-5.

21. That the charges against which the Complainants seeks refund, were also levied as per the agreed terms and conditions of the Buyer's Agreement, and the same were paid by the Complainants without any demur whatsoever. That the present Complaint is nothing but an attempt on part of the Complainants to seek wrongful gains over the wrongful loss of the Respondent.

22. That the due date of possession, as per clause 3.1, is 36 months from the date of issuance of the sanction letter of the Colony with 180 days grace period, however, the same was subject to the Complainants having complied with the terms and conditions of the Agreement, force majeure events and other circumstances beyond the control of the Respondent.

23. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.

24. That throughout this period, the Respondents has faced grave difficulties. The Respondents were affected by circumstances beyond the control of the

Respondents, the benefit of which is bound to be given to the Respondents in accordance with clause 10 of the FBA.

25. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of modern mineral concession rules. Reference in this regard may be taken from the judgment of *Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said Project became scarce. The respondents no. 1 was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. Thus, on

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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.

26. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the Unit. That is pertinent to note herein that the Complainants have been in default of timely payment of the demands since the very beginning. The list of all the demands raised and the reminders issued are annexed herewith the reply. It is further submitted that despite there being a number of defaulters in the Project, including the Complainants, the Respondent had to infuse funds into the project and has diligently developed the Project in question. It must be noted by the Hon'ble Authority that despite the default caused, and occurrence of circumstances beyond the power of the Respondents completed the construction of the project and received an Occupation Certificate on 27.02.2018. A copy of the Occupancy Certificate dated 27.02.2018 is annexed as Annexure R6.

27. That thereafter the respondent offered the possession of the Unit to the complainants on 14.03.2018. It is pertinent to mention that respondent had credited Rs 1,80,294/- to the account of the complainants as compensation. Vide letter dated 14.03.2018 regarding the offer of possession, the

complainants were asked to make the requisite payment based on the Statement of Final Dues and complete the documentation required to enable the Respondent to initiate the process of physical possession of the unit, however the complainants never turned up to take the possession of the unit.

28. That the complainants willingly and voluntarily did not take possession of the unit or remit the balance sales consideration. Copy of offer of possession dated 14.03.2018 is annexed as Annexure R-7. Copy of the termination letter dated 19.11.2018 is annexed as Annexure R-8.

29. That it is the Complainants who failed to take possession and make the payment towards the due instalment demanded with the offer of possession. That due to the failure of the Complainants to take the possession of the unit after remittance of the balance sales consideration the unit of the Complainants was terminated on 19.11.2018 after giving multiple opportunities to the Complainants. That in turn, the Complainants had filed a complaint before the Ld. Authority for the reliefs of DPC and contesting the allied charges. As stated above, the Complainants were directed to take possession of the unit. Moreover, the Respondent gave a detailed finding on the levy of the charges as per calculation criteria prescribed in order dated 09.10.2018 in complaint no 113 of 2018. Thereafter, in compliance of the said order, the Respondent issued letter dated 19.07.2023 as per the findings of the authority. That it is pertinent to note that the Respondent in

compliance to order of the authority the charges were demanded as per the order and the Respondent has also has credited the delayed compensation amount of Rs. 6,33,461/- to the Complainants. The Complainants again, in order to arm twist the Respondent has filed the complaint before the Ld. Authority raising the same issues and seeking the same reliefs. A copy of Compliance letter dated 19.07.2023 is annexed as Annexure R9.

30. That the complainants were bound to make the payment of dues/interest. This obligation has been noted under Section 19 (6) and 19 (7) of RERA Act,2016.

31. In addition to the basic sale price, the complainants also undertook to pay additional charges such as EDC and IDC, Cost Escalation, increase in area, stamp duty, etc. The complainants also had the obligation to pay if there is any increase in rates by the government and the rate according to the change is super area. The FBA was voluntarily executed by the complainants.

32. That the terms of the FBA are sacrosanct and binding on the Parties. The FBA being a contract of a private nature was executed between the parties after a thorough reading and understanding of the terms and conditions mentioned therein forming an integral part of the contract/ agreement. Thus, executing FBA binds the parties by the terms and conditions enunciated therein.

D. ADDITIONAL DOCUMENTS BY THE PARTIES.

35. Complainants had filed an application in registry on 17.03.2025 seeking imposition of penalty under section 63 of RERA Act,2016 upon respondent for not handing over physical possession of unit in compliance of order dated 03.02.2025.

36. That the respondent has placed on record the statement of accounts issued to complainants in compliance of order dated 22.09.2021 in registry on 07.04.2025.

37. That vide order dated 07.04.2025, the respondent was directed to file an affidavit categorically specifying the heads under which charges have been levied upon the complainants along with the detailed breakup, the compliance whereof is being done vide an application filed in registry on 22.07.2025 and 03.12.2025.

38. That the respondent had placed on record email dated 31.07.2025 in registry on 01.08.2025, issued in compliance of order dated 03.02.2025 asking them to visit the office on 05.08.2025 at 3 P.M for completion of documentation and monetary formalities.

E.ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

38. Ld. counsel for the parties reiterated the submissions as made in their written pleadings/reply.

E. ISSUES FOR ADJUDICATION

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

F. OBSERVATIONS OF THE AUTHORITY

40. Firstly, the issue of maintainability of a second complaint before the Real Estate (Regulation and Development) Act, 2016, founded on the same unit and between the same parties, must be examined through the settled doctrines of finality of adjudication, res judicata (including constructive res judicata), and the doctrine of election of remedies; all of which are principles rooted in public policy to prevent multiplicity of proceedings and conflicting decisions.

41. In the ordinary course, once a competent authority has adjudicated upon a dispute, particularly where the issues, reliefs, and cause of action substantially coincide, a subsequent complaint would be barred by the doctrine of res judicata under Section 11 of the Code of Civil Procedure, which, though procedural, embodies a rule of universal application. The Supreme Court has consistently held that a party cannot seek "a second bite at the cherry" on the same cause of action; in *Ireo Grace Realtech Pvt Ltd v. Abhishek Khanna, 2021 AIR 437*, it was emphasised that where concurrent remedies exist, once a party elects and pursues one remedy, it cannot subsequently agitate the same grievance afresh. The principle extends not merely to matters actually decided *but also to those which ought to have been raised in the earlier proceedings, thereby attracting the doctrine of constructive res judicata.* In order to elucidate the latter issue, if

a complainant demands possession in a complaint, the same is awarded and he obtains it, the issue is settled. Now, at a later stage, he cannot file a fresh complaint asking for delay interest. That is a concomitant issue, indelibly connected to the original one. Hence it cannot form the basis of a fresh complaint. The law ordinarily expects that all consequential and ancillary reliefs arising from the same cause of action, including delay interest or compensation for delayed possession, ought to have been claimed in the same proceeding. Failure to do so attracts the doctrine of constructive res judicata, as embodied in Explanation IV to Section 11 of the Code of Civil Procedure. The Hon'ble Supreme Court in *Forward Construction Co. v. Prabhat Mandal (Regd.) (1986) 1 SCC 100*, authoritatively held that matters which "might and ought" to have been raised in earlier proceedings are deemed to have been directly and substantially in issue, and cannot be reagitated subsequently. Similarly, in *Gurbux Singh v. Bhooralal, (1964 7 SCR 831)*, the Court underscored that a plaintiff cannot split claims arising from the same cause of action and pursue them piecemeal in successive proceedings. In the above example, the *doctrine of election* would also operate, inasmuch as the complainant, having elected to pursue a particular relief structure in the earlier proceedings, cannot subsequently reconfigure the lis.

42. However, the bar is not absolute. A subsequent complaint may be entertained where the earlier adjudication does not constitute a final decision on

merits, or where a distinct cause of action arises at a later stage. If the earlier complaint was dismissed on technical grounds, or liberty was expressly granted to file afresh, the embargo of res judicata would not apply. Further, where the reliefs sought in the subsequent complaint are qualitatively different, i.e consequences arising post-adjudication, the complaint may survive scrutiny.

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

44. Factual position herein is that complainants had initially filed complaint no. *1070/2018 titled as Manoj Kumar vs BPTP Ltd* involving primarily issue/relief of possession and delay interest alongwith disputed charges-cost escalation, enhanced EDC, Club charges, GST.

45. Aforesaid complaint was decided by the Authority vide its order dated 22.09.2021Relevant part of the order is reproduced below for reference:-

> *"The Authority on perusal of above cited judgments finds that the same are not applicable to the case in hand. The offer of possession in the cited cases was held illegal and it was for this reason that the interest liability of the respondent was ordered to contimue even beyond the date of offer of possession. The Authority, however, in present case has already concluded vide its order dated 29.07.2021 which is reproduced herein before, that a valid offer of possession was sent by the respondent to complainant on 14.03.2018 after obtaining occupation certificate on*

> *27.02.2018. So, the interest liability of the respondent on account of delay in offering possession cannot continue beyond 14.03.2018 on which a valid offer of possession was sent to the complainants.* ***Accordingly, the complainants are held entitled for delay interest only from deemed date of possession (30.06.2014) to date of occupation certificate (14.03.2018).***
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> *4. As regards the demands accompanying the offer of possession, it is suffice to mention that Authority had laid down guidelines for calculating various components of the impugned demands namely cost escalation, enhanced EDC, Club charges and GST in an earlier decided case of respondent disposed of on 16.07.2018 bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd. The demands served upon the complainants with offer of possession for paying cost escalation, enhanced EDC, Club charges and GST were not calculated as per those guidelines and therefore charges demanded under these heads are held as not payable by the complainant till the same are revised and calculated as per guidelines of Madhu Sareen's case. So, the respondent is directed to recalculate various components of impugned demands in consonance with principles of Madhu Sareen's case and shall thereafter serve fresh demands upon the complainants.* ***In case, any of complainants is dissatisfied with any of the demand so raised, he will be at liberty to file a fresh complaint to challenge validity thereof.."***

46. In complaint *no. 113/2018 titled as Madhu Sareen vs BPTP Ltd*, Authority had already decided the issue of increase in super area, cost escalation, GST, club membership charges EDC&IDC and EEDC. Respondent was further directed to re-calculate the demands and to issue a fresh statement of accounts. In case of non-satisfaction of the revised statement of account, the complainants were given liberty to approach again. Para 4 of disposal order dated 22.09.2021 is referred, which is already reproduced above. This liberty was provided to that complainant and not to any other complainant who might quote that judgment in its own case.

47. Following the decision dated 22.09.2021, the respondent had issued compliance letter cum fresh statement of accounts dated 19.07.2023 demanding balance amount of ₹ 9,96,755/-. Occupation certificate had already been received on 14.03.2018. Compliance letter was not acceptable to complainants. Present complaint has been filed challenging the demands along with request for quashing the compliance letter/statement of account dated 19.07.2023 on the basis of illegal demands itself. As such, the issue of illegal demands has already been adjudicated by the Authority in complaint no. 1070/2018 relying upon principles laid down in complaint no. 113/2018 decided on 09.10.2018. ***In case of non-satisfaction that too particularly qua the re-calculation of the demands only, the fresh complaint in hand is maintainable. Any of the fresh demand/issue will not be adjudicated at this stage.***

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

Sr. No.	Demands	Adjudication in Complaint no. 113/2018	Disputed by complainant	Amount/justification reflected by the respondent for its compliance letter/statement of account filed in registry on 03.12.2025.
1.	Increase in Super Area	Accordingly, as per provisions of the flat buyer agreement reproduced above, the super	Area has been increased from 906 sq. ft to 966 sq. ft.	Clause 1.13 and 1.10 is referred by respondent in its application filed in

		area could be changed to the extent of 15%. In the present case the super area has been increased from 1306 sft. to 1402 sft. which represents an increase of about 7.5%, therefore, the change in super area and the demand made in accordance with that is covered by the flat buyer agreement. The respondent, therefore, is entitled to charge for the same at the agreed rates. This, however, will remain subject to the condition that the flats and other components of super area in the project have been constructed in accordance with the plans approved by the department/competent authorities. To the extent the of the enhancement in super area is found not to be in accordance with the approved plans, the respondent will not be entitled to charge for the same. The respondent shall send a detailed and reasoned communication to the allottees stating therein the details of increased super area. A fresh challenge before this Authority can accordingly be made by any party if they so desire.		registry on 03.12.2025.
2.	Cost Escalation	The question that arise before this Authority is whether the cost escalation should be allowed up to the deemed date of possession i.e. 06.11.2014 or up to actual date of offer of possession i.e. 21.03.2018. Admittedly, almost entire sale consideration was paid by the complainant to the	Rs 5,77,745/- -No basis has been supplied by respondent as to how the cost escalation has been calculated. -Complainant is not liable to pay any amount	Rs 1,43,553/- Cost escalation **waiver** given by respondent as per sheet attached by respondent in its application filed in registry on 03.12.2025.

		respondents up to the year 2012. No default on the part of the complainant in making payment to the respondents has been alleged with any substantive evidence. Admittedly, the project has been delayed by over 4 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 15.01.2011 up to the deemed date of delivery of possession after grace period i.e. 06.11.2014. No escalation in cost can be allowed after 06.11.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant. Now, comes the issue of the basis of calculating the cost escalation. The prices of steel, cement and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the actual escalation in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed. The dispute is whether CPWD or CIDC table should be adopted. CPWD is a public works department of the Central Government. It is presumed that they factor in	towards cost escalation.	

		all facts and circumstances while revising cost index of various materials. This Authority, therefore, orders that the CPWD table shall be followed to calculate escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession. These dates may vary in each individual case being disposed off through this common order. The respondent will recalculate the cost of escalation on the basis of above principle and communicate the revised escalation in cost to the complainants. Further, these calculations will be made only in respect of increase in the cost beyond initial 10% because 10% increase has already been accounted for in the basic cost charged from the buyers.		
3.	Power Back up installation charges	Accordingly, this being a clear stipulation made in the flat buyers agreement that PBIC @ Rs.25,000/- per KVA will be payable, the demand of Rs.1.25 lakhs raised by the respondents in respect of the lead case, therefore, is justified. It shall be calculated at the same rate in respect of all other cases.	Not disputed in pleadings.	
4.	Cost of Electrification & STP charges	The ordinary meaning of buying an apartment in a licensed and developed colony means and implies that the allottees when move into their apartments it will be electrified, it will have water supply and its effluents will be	Not disputed in pleadings.	

		treated in accordance with the prevalent law. The additional charges proposed to be levied in this regard under ordinary circumstances would not be justified. However, since this is a specific provision of the agreement and both the parties have agreed and signed the same, the complainants are duty bound to pay to the respondents for these facilities. The respondents however shall convey to the complainants the actual cost incurred in electrification and installation of the STP, and prorata distribute those costs amongst all the apartments in the colony. The actual pro-rata cost to be worked out in respect of each apartment only shall be charged by the respondents. The basis of such calculations should also be conveyed to the complainants. Further, the costs in these regards shall be calculated only upto the deemed date of possession of the apartments.		
5.	GST	Admittedly, the delivery of the apartment has been delayed by more than 4 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the	Not disputed in pleadings. Sought in relief sought only.	**Rs 87,599/- GST Waiver,** given by respondent as per sheet attached by respondent in its application filed in registry on 03.12.2025

		respondent in delivering the apartments, the incidence of GST should be borne by the respondent only. It is also observed that the amount of GST which is being demanded may not actually be leviable on the apartments purchased by way of construction linked payment plans. The respondents would be well advised to take the opinion of GST experts about the quantum of the tax leviable in the situation in which the complainants are placed. That advice of the experts may form a part of the record of the respondent for use in future.		
6.	Service Tax	Regarding Service Tax, advice of a service tax expert should be taken about the quantum of service tax payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartments. In accordance with the advice of the experts whatever service tax is payable up to the deemed date of offer of possession shall be demanded by the respondents and accordingly will be paid by the complainants.	Not disputed in pleadings.	
7.	VAT	Regarding the Value Added Tax, an advice of the tax expert should be obtained and communicated to the complainants along with detailed justification thereof. Whatever amount is worked out by the taxation expert in this regard shall be paid by the	Not disputed in pleadings.	

		complainants.		
8.	Preferential location charges and club membership charges	The demand on account of the preferential location charges accordingly is justified. It shall, however, be calculated in accordance with the rates provided in the aforesaid clause. Sub clause (c) of Clause 2.1 provides that car parking charges @ Rs.1.50,000/- per car parking slot shall be charged. The demands in this regard made by the respondents vide their letter dated 21.03.2018, therefore, is justified.	Not disputed in pleadings.	
9.	Club Membership Charges	Regarding club membership charges, the club is an important component of an apartment complex. Usually the construction of the club is done with the help of contribution from the buyers. If the full club has come into existence, and the same is operational or is likely to become operational soon the demand of Rs.50,000/- shall be discharged by the complainants. However, if the club building is yet to be constructed, the respondents should prepare a plan for completion of the club and demand money from members in instalments up to the date of completion of the club	Not disputed in pleadings.	
10.	EDC&IDC	Regarding the external development charges & IDC a specific provision has been made in sub clause (a) of clause 2.1 of the agreement by incorporating a provision	Demand was not accompanied by any supporting document showing the demand of Rs 442.40 per square	Rs 1,36,009/- (clause 2.1 (a) referred) reflected by respondent as per sheet attached by respondent in its application filed in registry on 03.12.2025.

		regarding Development Charges. The term Development Charges used in this clause has been defined in clause 1.17 of the agreement. As per the provisions of the agreement External Development Charge and IDC is payable by the complainant. The complainants have been making payments in this regard in the past also. In the lead case Rs.1,96,004.50 has been demanded by the respondent vide letter dated 21.03.2018 towards "External Development Charges and IDC." The External Development Charges have to be paid to the State Government for providing variety of external services. The IDC, however, is to be used by the developer for providing services within the colony. It would be appropriate to direct that the respondents shall separate the demands being made on account of EDC and IDC. The basis of calculation of the EDC also shall be conveyed by the respondent to the complaint. Accordingly, the due payable EDC charges as per the calculations shall be paid by the complainant to the respondent for paying to the State Government Authorities. Separate communication with regard to IDC shall be given by the respondent to the complaints specifying therein the reasons for charging the same.	feet by the government. Respondent has overcharged the complainant on account of EDC. The EDC Payable in terms of the rate fixed by the government per square feet is Rs 294.66 whereas respondent has charged Rs 442.40 per square feet towards EDC in the name of government.	

11.	EEDC charges	Regarding the enhanced external development charges (EEDC) the matter is sub-judice before the Hon'ble Punjab & Haryana High Court as to whether the State is justified in levying EEDC. It is ordered that if any amount towards EEDC has already been collected by the respondent, the same shall either be deposited with the State Government or it shall be kept in a separate fixed deposit. If Hon'ble High Court decides against deposition of the EEDC, then the said amount shall be refunded to the complainants, and if the court decides that EEDC is to be paid to the State Government then the respondent shall deposit the same with the State Government. If the money collected on account of EEDC has already been deposited with the State Government, its details will be conveyed to each of the complainants. If no money has been collected as EEDC and the Hon'ble High Court declares it as payable in future then each allottee will deposit the same proportionately.	Return the amount of EDC collected at the rate 292.57 per square feet to be paid as and when the lis pending in the Hon'ble High Court regarding charging of enhanced EDC is decided. True copy of the affidavit filed by the Department of Town and Country Planning dated 23.06.2023 pertaining to the present project in the context of EDC/EEDC is enclosed as Annexure A/10. Affidavit clearly states that the entire EEDC is due and nothing has been deposited by the respondent with the government.	Rs 2,64,806/- reflected by respondent as per sheet attached by respondent in its application filed in registry on 03.12.2025.
12.	Stamp Duty Charges	Dealt below in para no. 50 of this order.		

49. Complainants are disputing stamp duty charges stating that deemed date of possession was in the year 2013. Complainant is not liable to pay the stamp

duty charges of 2023. Respondent is liable to pay the differential amount between the rates applicable in the year 2013 and 2023. In respect of stamp duty charges, it is observed that said charges were not objected at the time of initial filing. It does not find mention in the disposal order. ***At this stage, complainants cannot raise a fresh issue. Moreover, the stamp duty charges are agreed to be payable by complainants by virtue of clause 6.4 of agreement*** which reads as '*The stamp duty, Statutory charges and registration charges and incidental charges for the execution and registration of the conveyance deed or any other documents required to be executed shall be solely borne by the purchaser*'.

50. In similar terms, the complainants cannot raise dispute qua the increase in area from 906 sq. ft. to 966 sq. ft. as it was not alleged at time of filing of initial complaint no. 1070/2018.

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

A. Demand of cost escalation-In respect of cost escalation charges, Authority had in the complaint no. 113/2018 as follows:-

"*The question that arise before this Authority is whether the cost escalation should be allowed up to the deemed date of possession i.e. 06.11.2014 or up to actual date of offer of possession i.e. 21.03.2018. Admittedly, almost entire sale consideration was paid by the complainant to the respondents up to the year 2012. No default on the part of the complainant in making payment to the respondents has been alleged with any substantive evidence. Admittedly, the project has been delayed by over 4 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 15.01.2011 up to the* *deemed date of delivery of possession after grace period i.e. 06.11.2014. No escalation in cost can be allowed after 06.11.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant. Now, comes the issue of the basis of calculating the cost escalation.* ***The prices of steel, cement and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the actual escalation in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed. The dispute is whether CPWD or CIDC table should be adopted. CPWD is a public works department of the Central Government. It is presumed that they factor in all facts and circumstances while revising cost index of various materials. This Authority, therefore, orders that the CPWD table shall be followed to calculate escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession. These dates may vary in each individual case being disposed off through this common order.*** *The respondent will recalculate the cost of escalation on the basis of above principle and communicate the revised escalation in cost to the complainants. Further, these calculations will be made only in respect of increase in the cost beyond initial 10% because 10% increase has already been accounted for in the basic cost charged from the buyers."*

In this regard, as per builder buyer agreement's clause no. 12.11, the respondent was to justify that price of steel, cement and other construction materials got increased more than 10% upto the due date of handing over of possession. Respondent failed to place any information or evidence in this regard. Moreover, the respondent had already delayed the project by 4 years. Accordingly, amount for cost escalation is not justified and complainants are not liable to pay the same.

B. Demand for GST charges- It is observed that GST came into picture in July 2017. Whereas the deemed date of possession was in year 2014.

Allottee should not bear the burden of tax which has been introduced after expiry of deemed date of possession. Complainant allottee shall not pay the amount of GST charges. It is pertinent to mention here that complainants had not stated anything about it in pleadings rather sought quashing of same in relief sought. Perusal of statement of account dated 19.07.2023 reveals that GST charges has not been asked for by the respondent.

C. Demand for EDC & IDC charges-It is observed that Authority had directed the allottees to pay the same. Respondent was however directed to supply the justification/basis of charging the same. Respondent has not supplied the justification of charging (at what rate it has been charged) the same till date. In such a situation, the excess demanded by the respondent stands quashed.

D. Demand for EEDC charges- It is observed that issue of EEDC has already been adjudicated in disposal order dated (1070/2018) 22.09.2021 and (113/2018) 16.07.2018. As such, issue of EEDC is still pending before Hon'ble High Court of Punjab and Haryana. Parties are directed to act in accordance with directions passed in order dated 16.07.2018 in complaint no. 113/2018.

52. In view of aforesaid discussion, the Authority concludes that the issue of delay interest has already been decided vide disposal order dated 22.09.2021.

Delay interest has been awarded from deemed date of possession (30.06.2014) to date of occupation certificate (14.03.2018) to the complainants. This issue cannot be re-opened at this stage.

53. Complainants had raised objections towards the illegal demands raised in statement of account dated 19.07.2023. Said objections/re-calculations has already been dealt with at length in para 50, 51 and 52 of this order. Thus, the entitlement of delay interest of complainants remains restricted only upto 14.03.2018. Relief clause (i), (ii), (iii), (iv) and (v) stands dealt with.

G. DIRECTIONS OF THE AUTHORITY

54. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Respondent is directed to issue fresh statement of accounts to the complainants within next 45 days in terms of directions issued in this final order.

ii. Complainants are also directed to accept the statement of account within next 30 days of receipt of statement of account, if they conform to the above directions with payment of outstanding due amount, if any.

iii. Complainants will remain liable to pay balance consideration amount, if any, to the respondent.

iv. There is no more any liberty granted to any party to approach this Authority again vis-à-vis this complaints. The liberty granted, referred to Supra was not eternal and was not on the subjective dissatisfaction of the complainants.

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

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]

NADIM AKHTAR
[MEMBER]

PARNEET S. SACHDEV
[CHAIRMAN]