



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	249 of 2025
Date of filing.:	21.02.2025
Date of first hearing.:	20.05.2025
Date of decision.:	14.05.2026

**Shalabh Aggarwal S/o Late Sh. Manmohan Swaroop Aggarwal**  
R/o E-86-A, Vishwakarma Colony,  
MB Road, Delhi-110044.

.....COMPLAINANT

VERSUS

**1. M/S BPTP Limited**

M-11, Middle Circle, Connaught Circus,  
New Delhi- 110001

**2. M/S Countrywide Promoters Pvt Limited**

OT-14, 3<sup>rd</sup> floor, Next Door Parklands,  
Sector-76, Faridabad, Haryana - 121004

....RESPONDENTS

Complaint no.:	523 of 2024
Date of filing.:	05.04.2024
Date of first hearing.:	14.05.2024
Date of decision.:	14.05.2026

1. **Nilu Arora** W/o Dr. Yogesh Arora, R/o C-204, ATS Green, Part-I, Sector-50, Noida, Uttar Pradesh.
2. **Vandana Midha** W/o Sh. Sunil Kumar Midha, R/o Flat no. 36, BH-2, Royal Garden Estate, Sector-61, Noida, Uttar Pradesh.
3. **Shalini Khanna** W/o Sh. Rahul Khanna, R/o Flat no. 39, BH-2, Royal Garden Estate, Sector-61, Noida, Uttar Pradesh.

....COMPLAINANTS

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Sector-76, Faridabad, Haryana - 121004

....RESPONDENTS

<b>CORAM:</b>	<b>Parneet Singh Sachdev</b>	<b>Chairman</b>
	<b>Dr. Geeta Rathee Singh</b>	<b>Member</b>
	<b>Chander Shekhar</b>	<b>Member</b>

**Present: - In complaint no. 249/2025**

Mr. Shalabh, Complainant in person.

Mr. Tejeshwar Singh, Counsel for the respondents through VC

**In complaint no. 523/2024**

Mr. Neeraj Goel, Counsel for Complainant through VC.

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

**ORDER (PARNEET S. SACHDEV-CHAIRMAN)**

1. Both of Captioned complaints are taken up together for hearing as they involve similar issues and are against same project of respondent

“Parklands”, Faridabad. This final order is being passed taking complaint no. 249/2025 titled as Shalabh Aggarwal vs BPTP Ltd as lead case.

2. 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

3. 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 in complaint no. 249/2025	Details in complaint no. 523/2024
1.	Name of the project.	Parklands, Sector 75-89, Faridabad	Parklands, Sector 75-89, Faridabad
2.	Nature of the project.	Residential	Residential
3.	RERA Registered/not registered	Not Registered	Not Registered

4.	Details of unit.	M-10-06, 331 sq. yds.  Later changed to Z-21-11, 269 sq. yds.	X-7-06, 300 sq. yds.  Later changed to Z6-14, 297 sq. yds.
5.	Date of Booking	25.04.2006	09.06.2007
6.	Date of builder buyer agreement	01.11.2008	12.10.2007  (Endorsed in favor of complainants on 15.07.2008)
7.	Due date of possession(24 months)	01.11.2010	12.10.2009
7.	Date of letter for change of unit	30.08.2011	10.08.2011
8.	Possession clause in BBA	<p><b>Clause 22.1</b></p> <p><i>That the possession for the said plot as proposed to be delivered by the Seller/Confirming party to the purchaser within about 24 months from sanctioning of the service plans of the entire colony, simultaneous to the execution of sale deed subject however to force majeure and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this</i></p>	<p><b>Clause 22.1</b></p> <p><i>That the possession for the said plot as proposed to be delivered by the Seller/Confirming party to the purchaser within about 24 months from sanctioning of the service plans of the entire colony, simultaneous to the execution of sale deed subject however to force majeure and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.</i></p>

		<i>agreement.</i>	
9.	Basic sale consideration	₹ 43,16,530/-	₹ 26,32,500/-
10.	Amount paid by complainant	₹ 33,94,945/-	₹ 31,22,753/-
11.	Offer of possession	Not made.	Not made.
12.	Completion Certificate	Not obtained.	Not obtained.

### B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. Facts of the complaint are that the original allottee Late Manmohan Swaroop and present complainant who are father and son by relation got the information about the project 'Parklands' Sector 76 Faridabad through multiple sources. Both the allottees submitted the application form for the allotment of unit in aforementioned project vide cheque of an amount of Rs 3,75,000/- dated 25.04.2006.
5. That allotment cum demand letter of plot no. M10-06 admeasuring 331 sq yds against booking of plot in parklands (which was later changed to plot no. Z21-11 admeasuring 269 sq. yds) was issued on 06.06.2008. Copy of allotment letter is annexed as Annexure P-1.

6. That on 01.11.2008 a pre-printed one sided arbitrary and unilateral plot buyer agreement was executed between the respondent and present complainant and his late father whereas BPTP acted as 'Seller' and Countrywide acted as 'Confirming party' and both the original allottee as purchasers. Copy of plot buyer agreement is annexed as Annexure P-2.
7. That as per clause 22.1 plot buyer agreement the respondent had to handover the plot in 24 months, i.e. 01.11.2010. As per schedule total cost of original plot was Rs 43,16,530/-. On 30.08.2011 the respondents unilaterally changed the plot allocated earlier i.e. M-10-06 to Z-21-11 due to change in the layout plan of the respondent. Additionally, the size of the unit was reduced from 331 sq. yds to 269 sq. yds. Thereby reducing the cost from Rs 4316530/- to Rs 3612502/-. Copy of intimation letter dated 30.08.2011 is being annexed as Annexure P-3.
8. That on the demand raised by the respondent, the complainant has paid 95% of total cost i.e. Rs 35,29,945/-(correct amount is Rs 33,94,945/-) only the 5% of the payment payable on the offer of possession remains to be paid. Copy of statement of account dated 21.06.2013 and payment receipts are annexed as Annexure P-4.
9. That on 28.02.2014 the main allottee and the present complainant's father Manmohan Swaroop Aggarwal expired. Death certificate could only be obtained on 13.03.2014. Information about the death of the main



complainant allottee had been provided to the respondents through email and personal visit. Copy of death certificate is attached as Annexure P-5.

10. That the respondent were supposed to provide possession of the plot by 01.11.2010 but has miserably failed in its commitments. Complainant wrote many emails and had verbal discussions on many occasions but the respondents were unable to provide clarity on the possession status of the plot. Copies of communications are annexed as Annexure P-6.

11. That the main grievance of the complainant is that respondents have failed to provide the possession of the plot on time, even after many years have passed as per the plot buyer agreement. Other grievance is that they have failed to provide the proper utilities like road and sewage the particular block. Hence the present complaint.

### **C. RELIEF SOUGHT**

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

- i. To direct the respondents to provide the possession of the same of any other alternative plot at the contractual price, upto the satisfaction of the complainant at the earliest.
- ii. To direct respondent to pay interest at prescribed rate on delayed possession since due date of possession i.e.

01.11.2010 till date of actual possession on paid amount of Rs 35,29,945/-

- iii. To direct the respondent to provide an updated ledger statement to the complainant and this honorable authority.
- iv. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondents filed detailed reply on 28.07.2025 pleading therein:

13. That the respondent no. 2 is not effective and vide order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by Hon'ble NCLT Chandigarh, the respondent no. 2 company has transferred its assets to the transferee company. That the respondent no. 2 is not a separate legal entity as on date and no legal action can be proceeded against the respondent no. 2, hence name of respondent no. 2 should be deleted from the array of parties. Moreover, no relief has been specifically sought against the respondent no. 2.

14. That plot bearing no. M-10-06 admeasuring 331 sq. yds was allotted on the basis of tentative layout plan. Thereafter, the plot of the complainant was changed to Z-21-11 measuring 269 sq. yds vide letter dated

30.08.2011. Complainant was further informed vide letter dated 30.08.2011 that plot buyer agreement dated 01.11.2008 for the earlier plot shall continue to hold for the new plot i.e. Z-21-11. Copy of booking form, allotment letter dated 06.06.2008 and unit change letter dated 30.08.2011 are annexed as Annexure R-2.

15. That the parties mutually, willingly and voluntarily entered into a plot buyers agreement on 01.11.2008. Relationship was purely contractual and flowed from the explicitly agreed terms and conditions of the agreement. Plot buyers agreement is annexed as Annexure R-3.

16. That the co-allottee Late Manmohan Swaroop died on 28.02.2014 thereafter the legal heir of the deceased allottee had relinquished their right in the unit in question, leaving the complainant as the sole allottee. Copy of relinquishment deed is annexed as Annexure R-4.

17. That the possession was proposed to be handed over within a period of 24 months from the sanctioning of the service plans of the entire colony. At this stage, it is submitted that the benefit of force majeure circumstances has to be given as has also been considered by Hon'ble Delhi REAT in the matter of Basant project limited through its Chief Executive Officer vs Real Estate Regulatory Authority (Appeal no. 145/2024) vide order dated 30.09.2024 has considered GRAP orders issued by the government for Air quality management are in the nature of force majeure and benefit of the same was given to the promoter.

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

19. That the Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the

project. Complete lockdown for an initial period of 21 days was imposed which started on 25 March,2020. Various governments also enforced strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities. Despite these measures, nation was again hit by second wave of Covid-19. During the period from 12.04.2021 to 24.07.2021 each and every activity including the construction activity was banned in the State. 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 said period shall not be added while computing the delay.

20. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan. Copies of the demand letters, payment receipts and reminders letters are annexed as Annexure R6(colly).

21. That the respondent no. 1 despite facing various difficulties applied for the zoning plan and completion certificate on 06.02.2012 and 14.09.2016 and 07.01.2014 respectively, however, the same has not been received till date. The delay on the part of the competent authority to grant the same is solely on part of such authority. In such circumstances and without prejudice to the contentions of the respondent no. 1 it is submitted that

complainant right in such circumstances is limited to seeking a refund as per clause 11 of the agreement.

22. Additionally, the complainant seeks the handover of possession which cannot be given in light of the absence of zoning plan and completion certificate. Ultimately, Doctrine of Supervening impossibility or the doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which was beyond control or calculation of the parties involved.

23. That in the facts and circumstances of the present case, the performance under the agreement has become possible to perform in light of the non approval of zoning plan and completion certificate and hence, possession cannot be handed over. Accordingly, present complaint is liable to be dismissed.

#### **E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT**

24. Both parties reiterated the submissions as made in their pleadings. Complainant clarified that reliefs sought are pressed against respondent no. 1 only. Ld. counsel for respondents relied upon judgment dated 04.09.2024 passed by Hon'ble Real Estate Regulatory Authority Gurugram in Complaint no. 6744/2022 in support of his contention that last payment

was made by complainant on 25.02.2013 and complaint has been filed on 2.1.02.2025, i.e around 12 years. In said judgment, three years time is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. Hence, complaint is barred by limitation.

25. Adv. Sarthak, proxy on behalf of Adv. Rajan Hans appeared through VC and stated that counsel have withdrawn their vakalatnama from present case.

#### **F. ISSUES FOR ADJUDICATION**

26. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?  
If Yes, the quantum thereof.

#### **G. OBSERVATIONS OF THE AUTHORITY**

27. As per record, respondent no. 1 in its written reply has stated that present complaint pertains to a unit bearing no. Z-21-11, admeasuring 269 sq. yds in the real estate Project "Parklands" being developed by the Respondent No. 1. The Respondent No. 2 was merely a confirming party to the agreement. Now, respondent no. 2 is not effective as vide order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by Hon'ble NCLT Chandigarh, the respondent no. 2 company has transferred its assets to the transferee company. Now, the respondent no. 2 is not a separate legal entity as on date and no legal action can be



proceeded against the respondent no. 2. Moreover, no specific relief has been sought from respondent no. 2. Hence, its name should be deleted from the array of parties.

Perusal of facts and submissions reveals that complainant has paid all amounts and carried out transactions with respondent no. 1 only. However, in builder buyer agreement the obligation of delivering possession to complainant was imposed upon both the respondents, i.e. Seller (BPTP) and Confirming Party (Countrywide Promoters Pvt Ltd) vide clause 22.1 of builder buyer agreement which is as follows:-

**Clause 22.1 to agreement**

*That the possession for the said plot as proposed to be delivered by the Seller/Confirming party to the purchaser within about 24 months from sanctioning of the service plans of the entire colony, simultaneous to the execution of sale deed subject however to force majeure and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.*

Keeping in view the foresaid clause, the request of respondent deleting name of respondent no. 2 is rejected. However, complainant during course of arguments has specified that no relief in particular is sought against respondent no. 2. *Accordingly, directions in this final order are being passed/issued against respondent no. 1 only.*

28. Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgment of Apex court Civil Appeal no. 4367 of 2004 titled as *M.P Steel*

*Corporation v/s Commissioner of Central Excise* where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfill its obligations qua delivery of possession of unit because of which the cause of action is re-occurring.

29.As per facts and circumstances, complainant in this case was initially allotted unit/plot bearing no. M-10-06, measuring 331 sq. yds. in the project being developed by the respondents namely Parklands situated at Faridabad vide allotment letter dated 06.06.2008. Builder buyer agreement was also executed between the parties for the said unit on 01.11.2008. However, after a gap of three years approximately, the unit of the complainant was shifted from unit no. M-10-06 and allotted a different unit bearing no.Z-21-11, measuring 269 sq. yds. vide unit change letter dated 30.08.2011. Complainant has paid a total amount of Rs 33,94,945/- against basic sale price of Rs 43,16,530/-. 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 or any alternate unit at the same contractual rate.

30. As per clause 22.1 of the builder buyer agreement, possession of the unit was to be delivered within a period of twenty four (24) months from the date of sanction of service plans. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of service plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The respondent in its reply has not submitted that date of approval of service plans. Thus, the contention of the respondent to calculated deemed date of possession from the date of sanction of service plans is rejected. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 01.11.2010.

31. Admittedly, the delivery of possession of the unit (Plot no. Z21-11) in question has been delayed beyond the stipulated period of time. The due date of possession in the present case is 01.11.2010. 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		

32. 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.

33. 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.”

34. 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.*

35. Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that “a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.” It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. *The Supreme Court in Energy Watchdog and Ors. Vs.*

*Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e*

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- Force majeure events must be unforeseeable by both parties;
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- ***Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.***

36. 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 93<sup>rd</sup> 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.

37. 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 24.06.2013 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.

38. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 01.11.2010. However, respondents failed to complete construction of the project and deliver possession within stipulated time. It is the stand of respondents in its reply that they had applied for the zoning plan and completion certificate on 06.02.2012 and 14.09.2016 and 07.01.2014 respectively,



however, the same has not been received till date. The delay on the part of the competent authority to grant the same is solely on part of such authority. In such circumstances, the complainant's right is limited to seeking a refund as per clause 11 of the agreement. Clause 11 is reproduced below for reference:-

*'The purchaser shall not have any right to cancel this agreement of its own accord, for any reason whatsoever save and except on frustration of this agreement on account of the clear and unambiguous failure of the warranties of the Seller/Confirming party. In such a case the purchaser shall be entitled to a refund of the installments actually paid by it without any interest thereon.'*

39. It is an admitted fact that the possession of the allotted plot (Z-21-11) has not been offered till date to the complainant. With respect to status of handing over of possession, the respondent in its reply has already expressed its inability to provide possession of originally booked plot to the complainant. Respondent has not substantiated the plea of inability to provide the originally booked plot to complainant with relevant documentary evidence. The onus lies on the respondent to substantiate its assertion. Respondent has pleaded that approvals are not pending on its part. Fact herein is that the respondent is utilizing money of complainant since 2013 without any letter/status report on booked plot. At this juncture, it is pertinent to highlight that respondent during all these years, i.e. 2014-2025, remained silent and did not even bother to refund the amount received from the complainant towards the sale consideration of



the plot. Now, the respondent cannot take the benefit of its own wrong for causing delay in offering the possession stating that possession of a booked unit is not possible. Significantly, the respondent has also expressed its willingness to refund the amount deposited by the complainants along with applicable interest. The complainant is insisting upon possession of the booked plot. No offer of an alternate plot has been made by the respondent.

40. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

*"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building .....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

41. The Authority observes that the respondent has severely misused its dominant position. Builder buyer agreement of the plot was made on 01.11.2008, due date of possession was 01.11.2010. Now, even after the lapse of 16 years, the respondent is has not offered possession to the complainant. In these circumstances, the provisions of Section 18 of the Act as reproduced above are clearly attracted. Therefore, the Authority hereby concludes that the complainant is entitled for the delay interest

from the deemed date i.e. 01.11.2010 till the date on which a valid offer is to be sent to the complainant after obtaining completion 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.

42. 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;*

43. Rule 15 of RERA 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”*

44. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 14.05.2026 is 10.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

45. The Authority has got calculated the interest on total paid amount (in complaint no. 249/2025) and the said amount works out as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 14.05.2026 (in ₹) excluding force majeure period				
			01.11.2010 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 14.05.2026
1.	29,00,000	01.11.2010	2944938	No interest	161319	No interest	1526528
2.	64,801	08.12.2012	51080	No interest	3605	No interest	34111
3.	3,30,144	21.02.2013	252910	No interest	18365	No interest	173784
4.	1,00,000	25.02.2013	76488	No interest	5563	No interest	52639
<b>Total:</b>	33,94,945/-		3325416	No interest	188582	No interest	1787062
			Total=Rs 53,01,060/-				
			Monthly interest =Rs 30,136/-				

46. It is pertinent to mention here that complainant in its pleading has claimed to have paid an amount of Rs 35,29,945/-. However, respondent has placed on record statement of account detailing out payment of each installment wherein it is stated that an amount of Rs 80,000/- paid on 18.10.2008 vide cheque 444646 and Rs 55,000/- paid on 25.11.2008 vide cheque no. 444649 were not cleared due to signature mismatch issue. Hence, the total paid amount is being considered as Rs 33,94,945/- as per statement of account dated 12.05.2025 attached as Annexure R-7.

47. The complainant in relief clause (iii) has sought updated ledger statement from the complainant. This relief is neither pressed nor argued during arguments. Hence, no direction is passed against this relief.

48. In respect of complaint no. 523/2024, it is observed that complainants herein are subsequent buyers who had purchased the unit vide endorsement dated 15.07.2008. Builder buyer agreement dated 12.10.2007 was executed between the original allottee and respondents. Complainants as such had stepped into shoes of original allottee before expiry of deemed date of possession. As per endorsement attached at page 55 of complaint, it is revealed that four allottees stepped into shoes of original allottee, out of which three are present complainants and Another one is Mr. Shiv Gopal Badhwar. Said allottee had died. His death certificate dated 12.07.2011 is annexed as Annexure C-4. Now,

complainants are claiming possession of plot no. Z6-14 on basis of succession certificate dated 15.02.2014 issued in their favor by Court of Sh. Sandeep Mittal, PCS, Additional Judge (Senior Division). Said certificate is duly placed on record in registry on 01.12.2025. Deemed date of possession as per clause 22.1 of agreement comes out to 12.10.2009. As per observations made in aforesaid paragraphs, the Authority hereby concludes that the complainants are entitled for the delay interest (in equal share) from the deemed date i.e. 12.10.2009 till the date on which a valid offer is to be sent to the complainants after obtaining completion 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.

In complaint no. 523/2024

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 14.05.2026 (in ₹) excluding force majeure period				
			12.10.2009 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 to 14.05.2026
1.	27,44,138	12.10.2009	3099267	No interest	152649	No interest	1444484
2.	3,78,615	11.12.2012	298108	No interest	21061	No interest	199299
<b>Total:</b>	31,22,753/-		3397375	No interest	173710	No interest	1643783
			Total=Rs 52,14,868/-				

			Monthly interest=Rs 27,720/-
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## H. DIRECTIONS OF THE AUTHORITY

49. 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. In complaint no. 249/2025 - Respondent no. 1 is directed to pay upfront delay interest of Rs 53,01,060/- 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 Rs 30,136/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation/completion certificate.
- ii. In complaint no. 523/2024 - Respondent no. 1 is directed to pay upfront delay interest of Rs 52,14,868/- to the complainants (in equal share) 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 Rs 27,720/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation/completion certificate.



- iii. Complainant will remain liable to pay balance consideration amount to the respondent at the time when possession is offered to the complainant.
  - iv. The rate of interest chargeable from the allottees/complainant by the promoter, in case of default shall be charged at the prescribed rate, i.e., 10.80% by the respondent/promoter which is the same rate of interest which the respondent/promoter shall be liable to pay to the allottees/complainant.
  - v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.
50. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

  
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CHANDER SHEKHAR  
[MEMBER]

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DR. GEETA RATHEE SINGH  
[MEMBER]

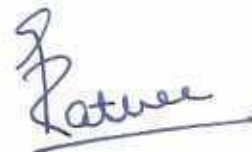
  
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PARNEET S. SACHDEV  
[CHAIRMAN]

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

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

Deemed date of possession in the present lead case is 01.11.2010. Therefore, question arises for determination as to whether any situation or



circumstances which could have happened after to this date, due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on the part of the respondents and the various reasons given by the respondents such as the NGT order, Covid outbreak etc. are not convincing enough for two fold reasons, firstly, as respondents had claimed that NGT orders passed in year 2016,2017 and 2019 have been one of the cause for delay in construction activity/development works of the project. It is pertinent to mention here that respondents herein are in business of real estate sector and are well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondents considering all such factors. Moreover, any event that subsequently occurred in the year 2016 could not have hampered the deemed date/construction work that was to be completed till the year 2010. Secondly, respondents themselves had promised to deliver possession of unit to complainant by 01.11.2010 so any delay if has occurred during completion of project, the respondents cannot burden it upon complainant. Complainant is not at fault for trusting respondents by depositing the amount

A handwritten signature in blue ink, appearing to read 'Rathee', with a horizontal line underneath it.

to respondents in return of delivery of possession of unit. Therefore, now, the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

*“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

*The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”*

3. In view of aforesaid observations, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.
4. In view of aforesaid observations, the complainant in complaint no. 249/2025 is entitled to delay interest ranging from deemed date of



possession (01.11.2010) to the date of valid offer of possession, i.e, offer made after obtaining completion certificate from the competent authority in terms of Rule 15 of HRERA Rules,2017. Calculation of upfront delay interest alongwith monthly interest is incorporated in the table below:

**Complaint no. 249/2025**

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e. 14.05.2026 (in ₹)
1.	29,00,000/-	01.11.2010	4868758/-
2.	64,801/-	08.12.2012	94068/-
3.	3,30,144/-	21.02.2013	471923/-
4.	1,00,000/-	25.02.2013	142826/-
<b>Total:</b>	<b>33,94,945/-</b>		<b>55,77,575/-</b>
<b>Monthly interest</b>			<b>30,136/-</b>

5. In view of aforesaid observations, the complainant in complaint no. 523/2024 is entitled to delay interest ranging from deemed date of possession (12.10.2009) to the date of valid offer of possession supported with completion certificate in terms of Rule 15 of HRERA Rules,2017.



Calculation of upfront delay interest alongwith monthly interest is incorporated in the table below:

**Complaint no. 523/2024**

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e. 14.05.2026 (in ₹)
1.	27,44,138/-	12.10.2009	49,19,691/-
2.	3,78,615/-	11.12.2012	5,49,276/-
<b>Total:</b>	31,22,753/-		54,68,967/-
<b>Monthly interest</b>			27,720/-

6. Accordingly, parties are directed as follows:-

- i. In complaint no. 249/2025 - Respondent no. 1 is directed to pay upfront delay interest of Rs 55,77,575/- 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 Rs 30,136/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining part completion certificate/completion certificate as the case may be.



- ii. In complaint no. 523/2024 - Respondent no. 1 is directed to pay upfront delay interest of Rs 54,68,967/- to the complainants (in equal share) 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 Rs 27,720/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining part completion certificate/completion certificate as the case may be
- iii. Complainants are also directed to accept the possession within next 30 days of receipt of offer alongwith payment of outstanding due amount, if any.
7. With the aforesaid directions, the cases stands Disposed of. File be consigned to record room after uploading on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

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