HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2783 of 2023
Date of filing.:	22.12.2023
Date of first hearing.:	23.01.2024
Date of decision.:	02.07.2026

Vijay Shukla,
S/o Sh. Shatrughan Prasad Shukla,
R/o Flat no. 265, Dwarkadheesh Apartment
Pocket-2 Near Dwarkadheesh Temple, Sector-12,
Southwest Delhi, Delhi- 110078 ....COMPLAINANT

VERSUS

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

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

3. Kabul Chawla,
8, ECE, House, 1st floor, KG Marg
New Delhi-110001

4. Sudhanshu Tripathi,
8, ECE, House, 1st floor, KG Marg

New Delhi-110001

....RESPONDENTS

CORAM:	**Parneet Singh Sachdev**	**Chairman**
	Nadim Akhtar	**Member**
	Dr. Geeta Rathee Singh	**Member**
	Chander Shekhar	**Member**

Present: - Mr. Arjun Kundra, Counsel for complainants through VC

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

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-131-SF, 1510sq. ft.
5.	Date of Allotment	06.10.2011
6.	Date of builder buyer agreement with original allottee	21.02.2014
7.	Date of endorsement	29.04.2014
8.	Date of fresh BBA executed with complaint	07.08.2014
9.	Due date of possession	Not available.
10.	Possession clause in BBA (Clause 5.1)	**Clause 5.1** The Seller/Confirming party proposes to make offer possession of the unit to the purchaser(s) within the commitment period alongwith grace period. **Clause 1.2-Commitment period-** Subject to force majeure circumstances, intervention of statutory authorities and Purchaser(s) any other circumstances timely complied with all its obligation, formalities and/or documentation as

		prescribed/requested by Seller/Confirming Party, under this agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all installments of the basic sale price and other charges as per the payment plan opted, the Seller/ Confirming Party shall offer the possession of the unit to the purchaser(s) as per the payment plan opted by the purchaser(s). **1.11 Grace period**-refers to the additional period of 180 days after the expiry of the Commitment period for making an offer of possession of unit.
11.	Total sale consideration	₹ 27,27,475/-
12.	Amount paid by complainant	₹27,69,232.85/-
13.	Offer of possession	02.08.2024 with demand of ₹ 12,30,887/- (inclusive of stamp duty charges of ₹ 4,60,000/-)
14.	Occupation Certificate	18.06.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint that the respondent launched a residential project in the years 2008-2009 at Faridabad, Haryana, under the name

"Park Elite Floors", and invited applications from the general public for booking of units therein.

4. That the original allottee booked a unit in the aforesaid project by depositing an amount of ₹3,00,000/- on 27.07.2009. At the time of booking, the respondent represented and assured that the project would be completed and possession of the unit would be delivered within a period of 36 months from the date of booking.

5. That thereafter, with a view to effect the sale of the aforesaid unit, the respondent facilitated the introduction of the complainant to the original allottee. Pursuant thereto, and with the consent and approval of the respondent, the allotment of the said unit was transferred in favour of the complainant on 16.04.2014, who thereafter stepped into the shoes of the original allottee and became entitled to all rights and obligations pertaining to the said unit.

6. That as per the Builder Buyer Agreement dated 21.02.2014 (complainant did not mention that fresh BBA was executed with complainant on 07.08.2014, copy of same has been annexed as Annexure C-6) executed between the respondent and the original allottee, possession of the subject unit was to be handed over within a period of 24 months from the date of execution of the said agreement. The said commitment was further reiterated and confirmed under Clause 5.1 of the Agreement dated

16.04.2014 executed in favour of the complainant upon transfer of the allotment.

7. That the complainant purchased the aforesaid unit for his residential use, as he was residing in rented accommodation and intended to shift to the said unit upon its completion. In order to finance the purchase, the complainant availed a housing loan of ₹21,03,604/- from HDFC Bank carrying interest at the rate of 10% per annum and made the requisite payments towards the sale consideration of the unit.

8. However, despite having received substantial payments from the complainant, the respondent failed to hand over possession of the unit within the stipulated period. As a consequence of such delay, the complainant was compelled to continue residing in rented accommodation while simultaneously servicing the housing loan, thereby suffering considerable financial hardship on account of rental expenses and EMI payments.

9. That the complainant has made total payment of ₹27,56,237.50/- to the respondent till date on following dates as per the table given below:-

S.no.	Date	Amount
1.	27.07.2009	3,00,000/-
2.	21.08.2009	2,75,050/-
3.	21.08.2009	63,950/-
4.	21.10.2009	2,88,400/-
5.	20.10.2011	1,23,429.85/-
6.	21.03.2014	2,00,000/-
7.	01.05.2016	15,05,407/-
8.	29.11.2016	12,996.65/- *(correct

		figure is 12,996/-)
	Total Amount	27,69,233.50/- *(correct figure is 27,69,232.85/-)*

10.It is submitted by the complainant that the present complaint is being filed on following grounds-

A) Violation of section 4(c) of the RERA- As there is no clarity on the completion of the phases of the project. The project was initiated in the year 2008/9. However, the project has not been completed nor the phases are being completed by the Respondents

B) No external development-It is submitted that few of the allottees because of their constrain have started residing in the project. However, there is, no complete basic facilities and amenities available in the project. Even the proper security is not available.

C) No complete internal development works-The proposed amenities and facilities which were mentioned in the brochure by the Respondents are not available. The Respondents have promised the following things in its brochure.

a. Terrace or lawn on every floor.

b. Parks

c. Recreation centres.

d. Schools.

e. Hospitals, club etc.

It is further submitted that the respondents have also promised to Develop the book the unit as per the direction it of BBA.

D) Violation of Haryana, development and regulation of urban areas act, 1975. That the Respondents without having approvals and permissions from the concerned authorities started taking bookings of the units in the project. and therefore, have committed offences punishable under section 10 of the Haryana, development and regulation of urban areas act, 1975, for the violation of section 7 read with section 3 of the Haryana, development and regulation of urban areas act, 1975.

E) Delay in delivery of the possession- That as per clause. 5 the Respondents was to offer possession within 24 months i.e. on or before 21.02.2016, but the possession of the unit has not been offered to the Respondents up till now.

F) Unilaterally and arbitrary increased in the super area- That the Respondents illegally increased the super area by 92 sq.ft. without taking any permission or even without informing the complainant.

G) Alteration in the sanction plan post allotment- the Respondents has never shared the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zooming plan. and such other plans. which includes the structural designs, etc. And now even after allotment without taking permission from the allottees, the

Respondents has arbitrarily and illegally changed sanction plan, layout plan, etc. It is submitted that as per section 4 (2) (d) RERA the promoters/Respondents are required to disclose/provide the sanction plan, layout plan and specification of the project and the phases thereof. Till date despite several request. Nothing has been provided by the Respondents to the complainant. It is further submitted that as per section 4(2) (h) despondent is required to make complete disclosure of the numbers, types and carpet area of the apartment for sale in the project along with the area of exclusive balcony or verandah area and exclusive open terrace area, however, the same has also not been disclosed by the Respondents to the complainant.

H) As per section 4 (2)(1) (c) The Respondents is also required to declare the time period within which he undertakes to complete the project and the phase is thereof, however, the same has not been declared by the Respondents.

I) The Respondents is illegally charging for the areas which are not chargeable as per the prevailing laws.

J) That the promoters have violated the conditions of the RERA Act, 2016 by not registering with the Real Estate Regulatory Authority and therefore, punishable under section 59 of the RERA Act.

K) That the promoters by not taking permission of the complainant before altering the booking area of the flat has violated the RERA Act and therefore punishable under section 61 of the RERA Act.

L) That as per section 18 and 19 of the RERA Act, in case of withdrawal by the allottee due to delay on the part of promoter, the complainant is entitled to refund of the amount paid by them with interest along with the compensation as determined under the Act. Thus, the present complaint.

C. RELIEF SOUGHT

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

   i. Direct the Respondents to handover the possession of the booked unit immediately with the complete amenities and facilities which were offered by the Respondents through its brochure while launching the project the same is mentioned in para 10(c) of the grounds.

   ii. Direct the Respondents to pay the delayed interest/compensation 18% PA for not handing over the possession of the booked to unit on time.

iii. Direct the Respondents to pay compensation of Rs. 10 lacs for altering the booked area without seeking permission from the complainant.

iv. Direct the Respondents to pay a compensation of 4 lacs for violation of section 12 and section 19(4) of RERA.

v. Direct the Respondents to pay a compensation of Rs.10 lacs for causing mental harassment and agony to the complainant.

vi. Direct the respondents to pay a compensation of Rs 18700 PM for the period of delay against rent paid by the complainant due to delayed in handing over the possession of the unit to the complainant.

vii. Any other relief, order or direction as deemed necessary by RERA.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 29.01.2024 and 19.04.2024 pleading therein:

12. That the respondent no.1 is a mere confirming party to the agreement and is neither a proper nor a necessary party. That no relief has been sought against Respondent no.1 and hence the name should be deleted from array of parties. Moreover, the respondent no.3 and 4 are also mere

directors of BPTP Ltd. hence their names should be deleted from the array of parties.

13. That the original allottee, Mr. Manoj Nagpal, expressed his interest in purchasing a unit in the project being developed by Respondent No. 2 and, pursuant thereto, a booking form dated 12.06.2014 was executed by him.

14. That initially, the original allottee was not allotted any unit during the first phase of allotment in the project of Respondent No. 2. Thereafter, upon the request of the original allottee for consideration of his case in the second phase of allotment, a residential independent floor bearing No. PE-131-SF, situated on the second floor and tentatively admeasuring 1510 sq. ft. of super area, was allotted to him on the basis of the tentative layout plan. Copies of the allotment letter dated 06.10.2011 and the consent form are annexed with reply as Annexure R-2 (Colly).

15. That subsequently, the said unit was transferred/endorsed in favour of the present complainants. In this regard, an Agreement to Sell, Indemnity-cum-Undertaking, and Endorsement Form were duly executed between the parties. Copies of the Agreement to Sell, Indemnity-cum-Undertaking executed by the transferor and transferee, and the Endorsement Form are annexed with reply as Annexure R-3 (Colly).

16. That the complainant, being a subsequent purchaser is not entitled to claim delay possession charges. At the time the unit was endorsed in

favour of the complainant, the project was already facing delays owing to circumstances beyond the control of Respondent No. 2. The complainant was fully aware of the existing status of the project and the delay prevailing at the time of such transfer. Further, the complainant had voluntarily executed an Undertaking dated 29.04.2014, wherein he expressly acknowledged the existing delay and waived his right to claim any compensation, damages, interest, or other monetary relief from the company on account of delay in the offer of possession. In view of the said undertaking, the complainant is estopped from raising any claim for delay compensation against the respondents.

17. That such prior knowledge, willing and self-initiated endorsement of the complainant without any protest amounts to acceptance of the existing circumstances and he cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the said unit. The Hon'ble Supreme Court has held in Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479 that: The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent.

18. Moreover, Maharashtra RERA in Sandeep Sahebrao Valase Vs. Glomore Constructions No. CC006000000193435; and Ors. Complaint MANU/RR/0189/2021 had, in a case filed by subsequent allottee, held that the complainants are not entitled to delay possession charges under

section 18 of the Act. Hence, delayed possession charges in the above-mentioned circumstances cannot be allowed to the complainant.

19. That the parties voluntarily entered into a Floor Buyer Agreement dated 07.08.2014 in respect of the unit in question. Thereafter, the complainant availed a housing loan from Housing Development Finance Corporation Limited (HDFC Ltd.) against the said unit, for which the necessary permission to create a mortgage was duly granted by Respondent No. 2. Further, a Tripartite Agreement dated 16.05.2014 was executed amongst the complainant, the lender, and Respondent No. 2.

20. That in terms of Clause 3 of the Tripartite Agreement, the primary liability for repayment of the loan amount rested upon the complainant. The obligation of Respondent No. 2 was limited only to payment of the EMIs in accordance with the terms and conditions stipulated therein. Accordingly, the respondents cannot be saddled with any liability beyond the scope of the obligations expressly undertaken under the Tripartite Agreement.

21. That it was expressly agreed between the parties that the area of the unit was tentative in nature and subject to variation upon finalisation of the layout plans and construction. The complainant had duly executed an Undertaking as well as an Affidavit acknowledging and accepting the tentative nature of the unit and its area. In terms of Clause 1 of the Undertaking and Clause 4 of the Affidavit, the complainant

unequivocally agreed that the area of the unit was provisional and liable to change. Having accepted the said terms, the complainant is estopped from disputing the variation in area or raising any grievance on this account.

22. Moreover, as per clause 5.1 r/w clause 1.3 and 1.11 the due date of possession was proposed to be handed over as per the payment plan opted by the purchaser along with the grace period of 180 days. That hence, the due date of possession has not reached yet and the complaint is therefore premature.

23. That section 18(1)(b)of the Act allows the delay possession interest/ refund only in case of failure of the promoter to deliver the unit in accordance with the promised timelines. In present case, section 18 is not applicable and complaint amounts to misuse of the process of law and should not be entertained. Accordingly, present claim of delay possession charges being premature is liable to be dismissed. Since, the complainant has no right to seek delay possession charges.

24. That the construction of the unit was also hampered due to other circumstances beyond the control of the company the benefit of which is bound to be given in accordance with clause 9 read with 1.10 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 respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. Thus, on account of several orders, directions passed by the various authorities/forum hindered the development of project. Ban by NGT vide order dated 19.07.2016 for 30 days, Ban by Environment Pollution Authority vide order dated 07.11.2017 and 01.11.2019 for 90 days and 4 days respectively and Ban by Hon'ble Supreme Court vide order dated 04.11.2019 for 102 days.

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

27. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. Therefore, it is safely concluded that the said delay of 350 days in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be

added while computing the delay. That from the facts indicated above and documents appended, it is comprehensively established that a period of 350 days was consumed on account of circumstances beyond the power and control of the Respondent No. 1, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated come within the meaning of force majeure in terms with the Agreement.

28. The present complaint is liable to be dismissed. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the Unit. The copies of the demands letters, payment receipts, and reminders are annexed as Annexure R-8.

29. Despite there being a number of defaulters in the project respondent no 2 had to infuse funds into the project and have diligently developed the project in question.

30. That the defaults of the allottees have severely impacted the construction of the project it is submitted that the complainants right in such circumstances is limited to seeking refund. According to clause 9.2 of FBA, developer is unable to deliver the flat to the allottee due to reasons of any legislature order, rules or regulations issued, authorities delay, denied, refused or withhold the grant of necessary sanctions for building, force majeure circumstances etc. the allottee shall be refunded their money without any interest or compensation.

31. That the respondent no.2 vide letter dated 17.08.2023 gave several options to the complainant for amicable settlement of the grievances of the complainant towards the unit. The complainant was given options of refund along with 6% simple interest along with two other options to choose from those two options. However, complainant failed to chose from the available option thus as per terms and condition of the letter dated 17.08.2023 the option of refund with 6% simple interest was deemed to be chosen by the complainant.

32. Since the binding rights and obligations of the parties derived from the FBA dated 07.08.2014, which was executed prior to the Act,2016 the latter is not applicable and in such a circumstance the act cannot be allowed to reopen or re-write the contract. That agreements that were executed prior to the implementation of RERA act, 2016 and Rules,2017 shall be binding on the parties and cannot be reopened.

33. That the complainant seek the handover of possession, which cannot be given in the absence of the occupancy certificate.

34. The respondent has submitted that in present complaint the doctrine of supervening impossibility or doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which were beyond the control or calculation of the parties involved. When such a contract becomes entirely impossible without the fault of the parties, the contract gets

dissolved by this doctrine. This doctrine is based on the maxim 'Lex non cogit ad impossibilia". The maxim essentially means that "law does not compel the impossible".

35. Reliance has been paid on the case *of Ocean Tramp Tankers Corporation v. V/O Soufracht (the Eugenia) [1964] 2 QB 226*, wherein it was held that when a fundamentally new situation occurs which makes it unreasonable and unjust to hold the parties accountable to perform their obligations, the contract becomes discharged. In the case of *Davis Contractors Ltd. v. Fareham Urban District Council (1956)*, when new circumstances arose which is different from what the parties anticipated for performing the contract, the doctrine of frustration applies.

36. Further, reliance has been placed by the respondent on section 56 and 65 of the Indian Contract Act, 1872 stating therein that when a contract becomes impossible to perform the advantage taken by one party under the contact has to be restored. In the case of *Sushila Devi v. Hari Singh SC: 1971 AIR 1756*, there was a contract regarding giving property on lease. The Supreme Court held that the term 'impossibility' need not be confined to practical impossibility. It could also mean impracticability with regard to the object and purpose of the parties to the contract. For this, some supervening event must have occurred which impacts the foundation of the contract.

E. ADDITIONAL DOCUMENTS FILED BY THE PARTIES

37. Respondent **had filed an application in registry on 27.01.2025** placing on record the copy of Occupation certificate dated 18.06.2024 and offer of possession issued to complainant on 02.08.2024. That the Respondent Company has already given the benefit of delayed possession charges (DPC) in the Offer of Possession dated 02/08/2024 issued by it. This DPC has been calculated from the due date of possession (as per the buyer's agreement) i.e. 07.02.2017 till the valid Offer of Possession (issued after grant of OC) as per RERA Act & Rules at SBI MCLR + 2%. The total DPC payable comes out to be Rs. 22,20,726/-. At the time/stage of Offer of Possession, the Complainants were liable to pay Rs. 7,70,887.86/- (not including stamp duty, registration charges, taxes, delay interest, etc.). Resultantly, the net amount payable by the Respondent Company to the Complainants on account of DPC after adjusting the due amount at the stage of offer of possession is Rs 14,49,838.14/-. In addition to the OC, Offer of Possession and Possession Reminder, the Respondent Company is placing on record CA-certified Calculation of the DPC, Cheques for the total amount payable to the Complainants as well as Photographs of the completed unit.

A. That accordingly, to bring the aforesaid facts before this Hon'ble Authority, the Respondent seeks to place on record the following documents:

B. Occupancy Certificate dated 18.06.2024 as ANNEXURE R-8;

C. Offer of Possession dated 02.08.2024 as ANNEXURE R-9;

D. Email dated 05.10.2024 as ANNEXURE R-10, wherein the Respondent requested the Complainant to take possession of the unit, stating that the Offer of Possession was issued on 02.08.2024 and that the unit was complete, further urging the Complainant to cooperate in completing the required documentary and monetary formalities for possession, handover, and registration of the conveyance deed.

E. However, the Complainant failed to take possession, and therefore, the Respondent is not liable for any delay compensation after the offer of possession was made. As per the RERA Act, the Respondent is only liable to pay delay compensation (DPC) for the period from the due date of possession to the date of offer of possession. Since the Respondent issued a valid Offer of Possession after receiving the valid Occupation Certificate, at most, the delay compensation can only be given for the period between the due date of possession i.e., 07.02.2017 and the offer of possession, which amounts to Rs.22,20,726/-.

F. CA certificate evidencing the calculation of delay compensation amounting to Rs.22,20,726/-, as ANNEXURE R-11.

G. Cheque dated 22.01.2025 of amount Rs. 14,48,807/- as ANNEXURE R-12, issued in favour of "VIJAY SHUKLA" towards payment of delay compensation after deducting the outstanding amount owed by the Complainant. At the time of the offer of possession, an amount of Rs. 7,70,887/- was payable by the Complainant as outstanding dues, as detailed in ANNEXURE A of the offer of possession. Therefore, since the Respondent was liable to pay compensation of Rs. 22,20,726/-under RERA, the outstanding amount was deducted, and cheques amounting to Rs. 14,48,807/- have been issued to the Complainant.

II. Photographs of the unit, clearly showing that the unit is complete in all respects, as ANNEXURE R-13.

38. **Application filed by the complainant seeking imposition of penalty upon respondent under Section 63 of RERA Act,2016.**

A.That the present application is being filed by the applicant seeking direction to take appropriate action against the respondent for non-compliance of order dated 27.08.2024. Whereby, the respondent had been directed by this Hon'ble authority to hand over the physical possession of the allotted unit.The copy of the order dated 27.08.2024 is annexed as ANNEXURE-1.

B.It is important to mention here that in order to show the compliance of the above-mentioned order the respondent sent possession letter with arbitrary terms and conditions. That once the possession is taken, the pending complaint before this Hon'ble court can be settled. In fact, the complainant was not given opportunity to take the possession of its flat without prejudice on the document proposed by the respondent to be signed by the complainant. The copy of the e-mail dated 09.09.2024, 05.10.2024, 22.11.2024, 06.12.2024, 11.12.2024 and the copy of the possession letter along with annexures are annexed herewith and marked as ANNEXURE-2 (COLLY).

C. In fact, the last date of hearing on the suggestion of this Hon'ble authority, the applicant personally visited the office of the respondent twice and was agreed to take possession of the allotted unit. However, the complainant was not allowed to do so, as he was being coerced into paying alleged outstanding dues, despite no dues being pending. Furthermore, the respondent sent threatening reminders to the complainant. The copy of e-mail dated 09.01.2025 is annexed here with and marked as ANNEXURE-3.

D. Hence, the present application to take appropriate action or direction against the respondent for deliberately non-compliance the order dated 27.08.2024.

39. **Complainant had filed rejoinder in registry on 16.05.2025 stating therein:**

A) The basic sale price of the unit is Rs. 27,27,475.60/- & the total net cost/sale price is Rs. 31,51,014.60/- & the complainant has already made the payment of Rs. 27,69,233.50/- to the respondents, till date (kindly refer to Pg. no. 30 of the complaint, i.e.., the statement of account dated 24.08.2023 issued by the respondents themselves).

B) That further, the alleged Offer of Possession dated 02.08.2024 & statement of receivables & payables (also attached with it) & issued by the respondents to the complainant was illegal, non-est, pre-mature & needs to be re-calculated && is also, against the settled principles on the RERA Act. (kindly refer to Pg. no. 7 & 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).

C) That it would be relevant to mention here that as per the FBA dated 21.02.2014 & 07.08.2014 the super built up Area of the present unit/floor was 140.282 sq. mtr., or 1,510 sq ft. (kindly refer to Pg. no. 50 & 112 of the complaint).

D)That further the alleged Offer of Possession dated 02.08.2024 mentions the super built up Area of the present unit/floor was 140.28 sq. mtr., or 1,510 sq ft. (kindly refer to Pg. no. 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves). However, in the alleged OC dated 18.06.2024 the area of the unit is only 109.756 sq. mtr or 1181.4 sq ft. (kindly refer to Pg. no. 6 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).

E) This clearly proves the alleged OC is of a smaller area & offer of possession is of a larger area & thus, the sale price of the unit needs to be reduced & further, also, the statement of receivables & payables are against the settled principles of the RERA Act & need to re- calculated & revised afresh.

F) Further, the respondents have failed to comply with directions given by this Hon'ble Authority vide order dated 27.08.2024.

G) The complainant on perusal of the same realized that even though the construction and development of the residential floor and the project is incomplete the respondents have offered possession of the unit illegally and arbitrarily. Over and above the same, the respondents have raised several illegal and arbitrary demands, also, (kindly refer to Pg. no. 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).

H) That although as per the provisions of the RERA Act, 2016, no developer has any right to levy exorbitant liability of 18% interest on any allottee, the respondent companies, as a measure to deliver forceful delivery of the unit over the allottee has promulgated the same in their offer letter. It states that in case the demands raised by the respondent companies are not met, the complainant shall be liable to make the payment of interest liability at 10% to 18% interest p.a. and pay holding charges also. It is the case of the complainant that the unit is not complete till date.

I) The complainant has several objections to the alleged offer letter 02.08.2024.Few of the concerns in brief are as follows:-

- **Incorrect assertion of the due date of possession & incorrect calculation of the delay interest payable to the complainant** -The respondents in the application filed by them before this Hon'ble RERA Authority under section 151 CPC dated 27.01.2025 in para no. 4 have mentioned that the due date of possession as per the FBA was

07.02.2017 & further calculated delay interest payable to the complainant as Rs. 22,20,726/- till 31.07.2024 @ 10.85% is absolutely illegal & against the numerous judgments passed by this Hon'ble Rera Authority. (kindly refer to Pg. no. 2, 11 & 30 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).

- That it would be relevant to mention here that the Allotment letter was issued on 06.10.2011 & FBA was executed only on 16.04.2014 after a delay of almost 3 years (with the original allottee namely Sh. Manoj Nagpal), the name of present complainant was nominated/endorsed on 08.05.2014 & the respondents also admitted to have received payment of Rs. 27,56,236.85/- from the complainant, which was almost the entire total sale price of the unit & further, a FBA was executed on 07.08.2014.
- That it would be relevant to mention here that the present complainant duly stepped into the shoes of the original allottee. That it would be further, relevant to mention here that the due date of possession, in any circumstance/case/scenario, cannot be later than 21.02.2016 (please refer to Clause 5.1 of the FBA dated 21.02.2014-pg. no. 55 of the complaint).
- That further, the respondent cannot take the benefit of grace period of 180 days for applying OC, etc., as the respondents never applied for

OC within the stipulated time & have themselves produced Ann R-8 copy of OC dated 18.06.2024 (after a lapse of more than a decade).That further, the complainant is entitled for delay interest till the actual legal & physical handing of the unit, as per Rule 15 of the RERA Act.

- unilateral **increase in Total sale price of the unit**- The total Sale price of the unit was Rs. 31,51,014.60/- as per the Statement of Account dated 24.08.2023 issued by the Respondents themselves (kindly refer to Pg. no. 30 of the complaint) and now illegally enhanced to Rs.35,40, 120.71/-.(kindly refer to Pg. no. 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).
- Cost **escalation**-The reasons for the cost escalation of Rs. 1,60,180.80/- are solely due to the delay in the construction and development of the project by the respondents and the complainant cannot be burdened with the same. (kindly refer to Pg. no. 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).
- Club **Charges**- The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The respondents cannot collect charges for the services which are non-existent till date.

- That there is no occupation certificate and completion certificate attached. **That further the alleged OC dated 18.06.2024 is for a smaller area of the floor/Unit.**
- Illegal & one-sided undertaking/indemnity attached with the alleged offer of possession Annexure C & D. That the respondents cannot force the complainant to execute such illegal/one-sided undertakings/indemnity bond before handing over the physical possession, which is clearly against the principles of natural justice, Rera Act & the contract act also.(kindly refer to Pg. no. 16 to 23 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).
- GST of Rs. **88,488**/- has been wrongly imposed on the complainant. That levy of Service Tax, Vat & GST altogether is illegal. (kindly refer to Pg. no. 10 of the application under section 151 CPC dated 27.01.2025 moved by the respondents themselves).

J) That the present complainant challenges also, all the other arbitrary demands mentioned under various heads as well & further, the alleged offer of possession letter dated 02.08.2024 & subsequent letters/ invoices/ SOA/ demand/recovery letters/maintenance charges letters, raised by the respondents are absolutely illegal & liable to be set-aside.

K) The Complainant has also already made the payment of 90% of the total sale price of the unit, back in year 2014, itself. (kindly refer to Pg. no. 102 & 30 of the complaint), also, the statement of account dated 24.08.2023 issued by the respondents themselves).

L.) That the threatened with the Complainant is being levy/demand/threat of holding charges in case he does not budge from his position. In the case of Capital Greens Flat Buyers Association vs. DLF Universal limited CC/351/2015 decided by the Hon'ble National Consumer Commission on 3rd January 2020, it was held that the builder cannot charge the holding charges having already accepted the entire consideration. The same were held to be illegal.

M) That further the levy/demand/threat of maintenance charges, etc., on the complainant is absolutely illegal till the time a valid & legal offer of possession along with a valid statement of accounts, further accompanied by a valid OC (of the correct area as agreed in FBA), etc., is issued to the complainant along with with actual physical & legal handover of the unit. Copy of the Emails is attached herewith as Ann-C-11 for the perusal of this Hon'ble RERA Authority.

40. Application **filed by respondent in registry on 07.07.2025** wherein explanation for the difference in area mentioned in the offer of possession and occupation certificate. It has been stated as follows:-

A. That on 20.05.2025, this Hon'ble Authority directed the Respondent to file an explanation regarding the difference in the area mentioned in the Offer of Possession (OOP) and the Occupation Certificate (OC).

B. That the Respondents respectfully seek permission from this Hon'ble Authority to place on record a compliance affidavit pursuant to the above order.

C. That the Occupation Certificate for the unit in question was obtained on 18.06.2024 (already on record as Annexure R-8), and possession was offered to the Complainant via the Offer of Possession dated 02.08.2024 (already on record as Annexure R-9).

D. That the Respondents seek to place on record the compliance affidavit. That no prejudice shall be caused to any of the parties if the present application is allowed.

E. That the present application is made bonafide and in the interest of justice.

F. That at the very outset, it is submitted that as per the Buyer's Agreement, the unit was sold on the basis of the super area i.e., the saleable area basis which the unit was sold was the super area of the unit. The super area was stated to be 1510 square ft. in the Floor Buyer's Agreement. It was further clearly stipulated in the Agreement that the allottee shall be liable to pay as per the super area. In this regard, Clause 1.23, Clause 2.1 and Clause 3.1 of the Floor Buyer's Agreement are reproduced below: -

"1.23 "Super Built Up Area" shall be the sum of the covered area of the said Unit including non-exclusive pro-rata share in the stair cases/common areas, balconies, verandahs on ground floor under balconies on first floor, mumties, shafts, elevation features, overhead water tanks, boundary wall, service area on the terrace, affluent treatment plan with respect to the Units, all projections and underground water tanks, structures for rainwater harvesting, if any, provided.

2.1........ the Seller/Confirming Party has agreed to sell, convey and transfer and the Purchaser(s) hereby agrees to purchase the Unit bearing No. PE-131-SF, on 2 Floor admeasuring Super Built Up Area of 1,510 sq. ft. (140,282 sq. mt.), in a building having 3 levels/floors (i.e. ground, first and second)......

3.1 In consideration of sale of the Unit by the Seller/Confirming Party to the Purchaser(s), the Purchaser(s) shall be liable to pay Basic Sale Price ("BSP") of Rs. 1,840.46/- per sq. ft. calculated on Super Build-up Area being sum of Rs. 2,727,475.60 (Rupees Twenty Seven Lakh Twenty Seven Thousand Four Hundred - Seventy Five Rupees Sixty Paise)."

G. That a bare perusal of the aforesaid clauses clearly delineates that the unit was sold on the basis of super area.

H.That during the course of proceedings in the present case, the Complainant has orally raised a legally untenable issue - that while an area of 1510 square ft. is mentioned in the Offer of Possession, an area of 1181.404 sq. ft. (109.756 sqm.) (Excluding mumty area) is mentioned in the OC. On this basis, the complainant is erroneously claiming that he is being conveyed much lesser area whilst being compelled to pay for 1510 square ft.

I. That as per the Buyer's Agreement, the total saleable area / super area of the residential floor is 1510 sq. ft. This saleable area corresponds to the super area of the residential floor in question. On the other hand, the OC reflects the FAR (Floor Area Ratio) area i.e., 109.756 sq. mt. (1181.404 sq. ft.) (excluding mumty area mentioned in the OC) as per the Haryana Building Code, 2017. Thus, there is no discrepancy in the area of the residential floor. In simple words, the super built-up area of the residential floor is 1510 sq.ft. whereas the FAR area of the residential floor is 1181.404 sq. ft. excluding mumty area mentioned in the OC). The residential floor has been sold on the basis of the super area, and consequently, this is the area reflected in the BBA and the Offer of Possession. On the other hand, the OC is issued as per the Haryana Building Code, 2017 which reflects the FAR area. The explanation/breakup of the area is as follows: -

i. The unit in question contains three floors i.e., ground floor, first floor and second floor. The ground floor has a veranda whereas the first and second floors have a balcony. The unit in question in the present case is on the second floor.

ii. The FAR of the second floor (as mentioned in the OC) is 1181.404 sq. ft.

iii. Additionally, the balcony of the second floor has an area of 201.18 sq. ft.

iv. The three floors have a mumty with projection admeasuring 127.23 sq. ft.; shaft admeasuring 43.4866 sq.ft., boundary wall admeasuring 20.77 sq. ft.; common terrace area admeasuring 142.30 sq. ft. and canopy admeasuring 88.48 sq. ft. These areas aggregate to a total of 422.27 sq. ft. and accordingly, for each floor, the proportionate area would be one-third i.e., 140.756 sq. ft.

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v. As such, the total super area of the unit in question would be as follows: -

a. FAR area: 1181.404 sq. ft.

b. Balcony: 201.18 sq. ft.

c. Proportionate 1/3rd of mumty wall with projection; shaft;boundary wall; common teracce area and canopy:140.756sq. ft.

d. Total Super Area-1523.34 sq ft.

J. In the present case, the area of 1181.404 sq. ft. mentioned in the OC does not mean that there has been any change/reduction in the area of the unit, rather, so it simply means that in the OC, only the FAR area is reflected. The super area of the floor in question is 1523.34 sq. ft. and there is no reduction in the same. In fact, despite the super area being 1523.34 sq. ft., the Respondent is only charging the Complainant for a super area of 1510 sq. ft. Clause 1.23 of the BBA defines the "Super Built Up Area" of the Unit as "the sum of the covered area of the said Unit including non-exclusive pro-rata share in the stair cases/common areas, balconies, verandahs on ground floor under balconies on first floor, mumties, shafts, elevation features, overhead water tanks, boundary wall, service area on the terrace, affluent treatment plan with respect to the Units, all projections and underground water tanks, structures for rainwater harvesting, if any, provided.

K. That the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016. Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

L. It has been submitted that the provision of Occupation Certificate is enshrined in Clause 4.10 of Chapter IV of the Haryana Building Code, 2017 and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he submitted that perusal of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code,2017, in accordance with several provisions. So, claim of complainant is misguided and erroneous. Further he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainant willfully, without raising any objections accepted each and every terms of agreement.

M

F. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENT

41. Ld. counsel for complainant and respondents reiterated the submissions as made in their pleadings.

G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS OF THE AUTHORITY

43. As per record, respondent no. 2 in its written reply has stated that present complaint pertains to a unit bearing no. PE-131-SF, admeasuring 1510 sq. ft in the real estate Project "Park Elite Floor" being developed by the Respondent No. 1. The Respondent No.1 is merely a confirming party to the agreement. Similarly, respondent no. 3 and 4 are neither necessary party nor a proper party to the present case. Moreover, no specific relief has been sought from respondent no. 1,3 and 4. Hence, their 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. 2 only. However, in builder buyer agreement the obligation of delivering possession to complainant was imposed upon both the respondents, i.e. Seller (BPTP) and Confirming Party (BPTP Parklands Pride Ltd) vide clause 5.1 of builder buyer agreement which is as follows:-

Clause 5.1 to **agreement**

"The Seller/Confirming party proposes to make offer possession of the unit to the purchaser(s) within the commitment period alongwith grace period."

Keeping in view the foresaid clause, the request of respondent deleting name of respondent no. 1 is rejected. However, complainant in its pleadings had failed to explain the obligation and specific role of respondent no. 3 and 4 in their personal capacity. No relief in particular has been sought against respondent no. 3 and 4. Hence, directions in this final order is being passed against respondent no. 1 and 2 only.

44. As per facts and circumstances, original allottee in this case was initially allotted unit bearing no. PE-131-SF , measuring 1510 sq. ft. in the project being developed by the respondents namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 06.10.2011. Builder buyer agreement was also executed between the original allottee and respondents for the said unit on 21.02.2014. Complainant purchased allotment rights of unit from the original allottee and got unit endorsed in his favor on 29.04.2014. Thereafter, both parties executed a fresh/new builder buyer agreement in respect of the unit

bearing PF-131-SF on 07.08.2014 for a basic sale consideration of ₹ 27,27,475/- against which the complainant has paid a total amount of ₹ 27,69,232.85/-. It is the contention of the complainant that the respondents have failed to complete the project and thus delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking possession of the booked unit along with delay interest.

45. As per clause 5.1 of the builder buyer agreement, possession of the unit was to be delivered as per payment plan (construction linked plan) opted by the allottee. No time period has been specified therein. At the outset, it is relevant to comment with regard to clause of the agreement where the no time line for handing over of possession has been provided that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession.

46. In absence of specific clause of deemed date of possession in builder buyer agreement, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In Appeal No. 273/2019 titled as "TDI Infrastructure Ltd vs Manju Arya", Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s

Fortune Infrastructure (now known as M/s Hicon Infrastructure) and Anr. In which it has been observed that period of 3 years is a reasonable time of completion of construction work and delivery of possession. In present case, unit was allotted to complainant vide builder buyer agreement 07.08.2014. taking 3 years time period as a reasonable time for completing the project, the deemed date of possession works out to 07.08.2017.

47. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. The due date of possession in the present case is 07.08.2017. 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

48. 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.

49. 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."

50. 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.*

51. 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.***

52. In the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be

accepted for the period of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. However, with respect to other events, the respondent has failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all. Mere pleading of force majeure conditions without fulfilling its obligations, cannot be allowed as discussed above.

53. 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 07.08.2017 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.

54. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 07.08.2017. However, respondents failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 02.08.2024 alongwith demand of ₹12,30,887/- (inclusive of stamp duty charges of ₹ 4,60,000/-). Said offer of possession was issued after receipt of occupation certificate on 18.06.2024. It is the submission of the respondents that the offer of possession was issued after completion of all development works and receipt of occupation certificate, thus the complainant should have accepted the said offer of possession. However, the complainant failed to do the same.

55. During the course of arguments, learned counsel for the respondent stated that after adjustment of delay interest vis-à-vis the total due amount as per offer. The respondent had issued cheque dated 22.01.2025 for ₹ 14,48,807/-. At the time of hearing, ld. counsel for complainant has stated that said cheque has been encashed by complainant. Further, he expressed his difficulty in accepting offer dated 02.08.2024 because of the disputed charges explained in application filed in registry on 16.05.2025.

56. With regard to the contention of the complainant, the Authority has carefully examined the statement of account issued along with offer of possession dated 02.08.2024 and observes as follows:

i. With regard to the cost escalation charges of ₹160,180/- , it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 07.08.2017. The respondent issued a letter offering possession on 02.08.2024, despite the deemed date of possession being in 2017, resulting in delay of 7 year. Additionally, the offer dated 02.08.2024 was accompanied with demands which are not acceptable to complainant being unjust and unfair. In said offer, the respondent also imposed cost escalation charges, which are unjust since the delay in offering possession, and any cost increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay was solely caused by the respondent, making it unfair to pass the burden of escalated costs onto the complainants. The complainants, having already endure 7-year delay should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. *Therefore, demand raised by the respondent on account of cost escalation charges is hereby rejected and set aside.*

ii. With regard to the demand raised by the respondents on account of club membership charges of ₹ 15,000/-, Authority observes that club membership charges can only be levied when the club facility is fully operational with all amenities. In this case, it is essential to note that the Occupancy Certificate (OC) for the floor has been obtained by the respondent on 18.06.2024. However, no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Complainant has submitted that the proposed club has not been constructed till date. Respondents have not placed any evidence to negate the claim of the complainant. *Since the club has not been constructed, the demand raised by the respondent on account of club charges for a non-existent club is also set aside.*

iii. With regard to the demand raised by the respondents on account of GST, Authority is of the view that the deemed date of possession in this case works out to 07.08.2017 and charges/taxes applicable on said date are payable by the complainant. Fact herein is that GST came into force on 01.07.2017. i.e. pre- deemed date of possession. *Therefore, the complainant is liable to pay GST charges.* It is the contention of complainant that levy of service tax, VAT & GST altogether is illegal. No supporting documents/submission has been relied upon. Charges raised on account of *VAT and service tax* are payable to the Government. *Therefore, the same are to be levied by the respondent and payable on the part of the complainant as per law.*

iv. With regard to the final area of the unit which is chargeable from the complainant. it is noted that as per the builder buyer agreement executed between the parties, the area of the floor was 1510 sq. ft. however, ultimately as per the occupation certificate dated 18.06.2024, the area of the floor comes to 1218.76 sq. ft.. Authority observes that respondents are entitled to charge only for the area of the unit which is actually to be provided to the allottee at the time of handing over of possession. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code,2017 which clearly establishes that lift, mumty, balcony, parking , services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of the project. However, cost of construction of all such structures which is not included in FAR can be burdened upon total cost of the unit by the respondent but: cannot be charged independently making it a chargeable component of the unit. Hence, the respondent is directed to re-calculate the price of the floor according to the final area of the unit i.e 1218.76 sq.ft

v. With respect to due towards maintenance charges, it is observed that separate maintenance agreement needs to be signed between the purchaser and Seller or maintenance agency as per clause 1.14 of agreement. Clause is reproduced below for ready reference:-

"Maintenance agreement shall mean an agreement to be executed between the purchaser and the seller or the maintenance service provider, in the format prescribed by the seller or its appointed agency or nominee (maintenance service provider) which is applicable and binding for all the owners and occupants of project."

As such, maintenance charges are payable by complainant only after execution of maintenance agreement. Said maintenance charges will become payable w.e.f valid offer of possession i.e. 02.08.2024.

57. The facts set out in the preceding paragraphs demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 46 of this order, respondents should have delivered possession of the floor by 07.08.2017. However, the respondents failed to construct the project and deliver possession of the booked floor. An offer of possession was issued to the complainant on 02.08.2024. Along with said offer of possession respondents had issued a detailed statement of account of payable and receivable amounts which has been challenged by the complainant on account of several discrepancies that have been already adjudicated in para 56 of this order. Said offer of possession was a valid offer of possession duly issued after receipt of occupation certificate on 18.06.2024. There was no impediment in the complainant having accepted the same. Admittedly there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay

till a valid offer of possession is issued to the complainant. Therefore, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 07.08.2017 till the date of valid offer of possession i.e 02.08.2024 minus the force majeure period of COVID-19 period. i.e., 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021.

58. As per Section 18 of the RE(R&D) Act,2016 interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

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

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

59. Hence, Authority directs respondents to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date works out to 10.80% (8.80% + 2.00%) from the due date of possession till the date of a valid offer of possession minus force majeure COVID-19 period.

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

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.08.2024 (in ₹) excluding force majeure period				
			07.08.2017 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 02.08.2024
1.	27,69,232. 85/-	07.08.2017	787433	No interest	154045	No interest	925091
Total:	27,69,232. 85/-			No interest		No interest	
			Total= 18,66,569/-				
			Total delay interest after deducting already paid amount of ₹ 14,48,807/- =4,17,762/-				

61. For the purpose of calculation of interest, the amount paid by the complainant upto valid offer of possession i.e. 02.08.2024 has been taken into consideration.

62. Complainant herein is claiming delay interest at the rate of 18%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases

63. It is pertinent to mention that in the captioned complaint, complainant has received timely payment discount from the respondents as a credit

towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainant and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainant cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

64. In respect of application filed under Section 63 of RE (R&D)Act,2016 seeking direction to take appropriate action against the respondent for non-compliance of order dated 27.08.2024. Whereby, the respondent had been directed by this Hon'ble authority to hand over the physical possession of the allotted unit. But said compliance was not made by the respondent. It is observed that ld. counsel for complainant has neither argued nor pressed upon this application. No direction is being passed against this application.

65. The complainant is also seeking relief of compensation for mental harassment, altering the booked area of unit and rent. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027

titled as *"M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the aforementioned reliefs.

I. DIRECTIONS OF THE AUTHORITY

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

   i. Respondents are directed to pay upfront delay interest of ₹ 4,17,762/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

   ii. The respondents shall issue a fresh statement of account to the complainant incorporating therein the principles laid down in this order within 30 days of uploading of this order.

   iii. Complainant shall accept the offer of possession within next 30 days of the receipt of fresh statement of accounts. Complainant will remain liable to pay balance consideration amount, if any, to the respondents at the time of actual/physical offer of possession.

iv. The respondents shall not charge anything from the complainant which is not part of the agreement to sell

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

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CHANDER SHEKHAR
[MEMBER]

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

....
NADIM AKHTAR
[MEMBER]

....
PARNEET S. SACHDEV
[CHAIRMAN]

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

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

2. 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 07.08.2017. 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

Rattan Yadav

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 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 2017 could not have hampered the deemed date/construction work that was to be completed till the year 2017. Secondly, respondents themselves had promised to deliver possession of unit to complainant by 07.08.2017 so any delay if has occurred during completion of apartment, the respondents cannot burden it upon complainant. Complainant is not at fault for trusting respondents by depositing the amount 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 (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

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

3. In view of aforesaid observations, the plea of 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 is entitled to delay interest ranging from deemed date of possession (07.08.2017) to the date of valid offer of possession (02.08.2024) i.e. offer made after obtaining occupation 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:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of offer i.e. 02.08.2024 (in ₹)
1.	27,69,232.85/-	07.08.2017	20,91,901/-
Total:	27,69,232.85/-		20,91,901/-
After deducting paid amount of ₹14,48,807/-, total payable delay interest ₹ 6,43,094/-			

5. Accordingly, parties are directed as follows:-

    i. Respondents are directed to pay upfront delay interest of ₹ 6,43,094/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

6. With the aforesaid directions, the case 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]

NADIM AKHTAR
[MEMBER]