HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**298 of 2025**
Date of filing.:	**26.05.2025**
Date of first hearing.:	**29.07.2025**
Date of decision.:	**17.09.2026**

Joginder
R/o H.no 548, Block -14, Sector-62
Ashiyana,Ballabgarh
Faridabad-121002

....COMPLAINANT

VERSUS

1.M/s BPTP Limited
Regd Office at OT-14, 3rd floor, Next Door
Parklands, Sector-76, Faridabad-121004.
2. M/s Countrywide Promoters Pvt. Limited
Regd Office at OT-14, 3rd floor, Next Door
Parklands, Sector-76, Faridabad-121004.

....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Chander Shekhar **Member**

Present: - None for complainant.

Mr. Tejeshwar Singh, Counsel for the respondents 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, Sector-84, Faridabad, Haryana-121007
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	EWS flat bearing no. 949 G-03,

5.	Date of Booking	28.02.2013
6.	Date of Allotment	16.12.2013
7.	Due date of possession	16.12.2017
8.	Total sale consideration	₹ 1,35,000/-
9.	Amount paid by complainant	₹1,31,441/-
10.	Offer of possession	29.09.2023
11.	Occupation Certificate	27.02.2018

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant has applied for an Economical Weaker Section (EWS) on 28.02.2013 and accordingly an advance payment of Rs.15,000/- has been submitted by the complainant with M/s BPTP Ltd and receipt no. 2012/1400042345 has been issued by the builder.

4. That on 16.12. 2013, the builder under customer code: 46/144800/89 has issued Allotment Letter confirming allotment of one EWS unit to complainant admeasuring 200 Sq. ft. @ Rs. 750/Sq. ft. for a total amount of Rs. 1,35,000/-. Said amount to be paid in four instalment as listed below:

Installment Description	Charges	Due Date	Amount
At the time of Allotment	25% of Flat cost	31st Dec -13	37,500/-
Within 60 days of Allotment	25% of Flat cost	14th Feb-14	37,500/-
Within 90 days of Allotment	25% of Flat cost	16th Mar-14	37,500/-
On possession	15% of Flat cost		22,500/-

5. That Allotment Letter is annexed as Annexure P-2 for EWS unit no. 949, G-03, Sector-84, Faridabad, Haryana. On 10.02.2014, a further sum of Rs.77,782/ - has been deposited by the complainant with the builder and receipt no.2013/1400026349 has been issued by the builder. It is pertinent to mention here that this payment included an advance payment of Rs.54,123/. This makes the total amount deposited by the complainant to Rs. 92,782/-with the builder. (Please refer to Annex-P3 for the same).

6. That 05.04.2014, a further advance of Rs. 38,659/- has been deposited by the complainant with the Builder and receipt no. 2014/140000190 has been issued by the builder. This makes the total amount deposited by the complainant to Rs. 1,31,441/- with the builder. It is pertinent to mention here that as per the payment schedule the complainant suppose to pay only Rs.112,500/- but in order to get the possession of his unit in time bound manner he deposited almost entire amount of his unit with the builder to avoid any payment related issues. (Please refer to Annex-P4 for the same).

7. That as per the EWS Policy of Department of Town and Country Planning Govt of Haryana, the possession of EWS flat must be handed over within a maximum period of 04 years from the date of allotment of the unit. Accordingly, by all means the unit of the complainant must be handed over on or before 16.12.2017.

8. That until this date M/s BPTP Ltd or M/s Countrywide Promoters Pvt. Ltd have neither delivered the possession of the flat of the complainant nor offer any interest on account of delay possession to the complainant hence now being the most vulnerable and feeble citizen of this country the helpless complainant seeks justice from this court as prayed below in prayer clauses of this complaint.

9. Complainant has filed rejoinder in support of its claim in registry on 17.03.2026.

C. RELIEF SOUGHT

10. That the complainant seek following relief and directions to the respondent:-

    i. To direct respondent(s) to immediately complete the remaining construction and hand over the actual physical possession along with occupancy certificate of the originally allotted EWS flat bearing unit no. 949 G-03, Sector-84, Faridabad, Haryana- 121007 allotted under customer code

46/144800/89 to the complainant and get flat's Conveyance Deed registered in his favor; and

ii. To direct respondent(s) to pay to complainant a simple interest of SBI Marginal Lending rate plus two percent per annum or any other higher rate of interest as this Hon'ble Court deem fit for causing delay in possession starting from the tentative date of possession i.e. 16th and Dec 2017 until the date of full and final settlement;

iii. To direct respondent(s) to unconditionally bear for entire price escalation/revision/addition of construction of the flat and also to bear the increase on account of Stamp Duty, Tax, Fine, Penalty or any other charges increased/levied/raised by the government on the post and 16th Dec 2017 for the registration of Conveyance Deed etc. of the said flat;

iv. To direct respondent to pay Rs.25,000/ (Rupee Twenty Five Thousand only) or any other higher amount as this Hon'ble Court deem fit towards legal consultation, drafting and other expenses born by complainant; and

v. To pass any other order against the respondent(s) and in favor of complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 04.11.2025 pleading therein:

11. That at the outset it is pertinent to state that Respondent No. 1, i.e., Countrywide Promoters Pvt Ltd, 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. 1 company has transferred its assets to the Transferee company. That the Respondent No. 1 is not a separate legal entity as on the date, and no legal action can be proceeded against Respondent No. 1, hence, the name of Respondent No. 1 should be deleted from the array of parties. A copy of the order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024, passed by Hon'ble NCLT, Chandigarh, is annexed as Annexure R1.

12. That the Haryana RERA, Gurugram, acting in exercise of the powers conferred on it under Section 85 of the RERA Act, 2016, has implemented the "Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of Complaints), Regulations, 2018" vide Notification bearing No. No. 2694:RERA PKL/2019 dated 16.07.2019. That under Regulation No. 8, the Haryana RERA, Panchkula, has given specific reference to the manner in which a complaint has to be filed. A bare perusal of the complaint at hand shows that the present Complaint has

been filed in utter disregard of the said regulations, and hence, the said complaint should be dismissed.

13. That bare perusal of the entire complaint reveals that no violation of any manner of any of the provisions of the RERA Act 2016 has been contended by the Complainant. That the Ld. Authority is a statutory body that is bound to act within the four walls of the statute under which the body has been implemented. A trite difference between a civil court and the statutory authority needs to be necessarily considered at this stage. While, before a suit is filed in a civil court, certain provisions of the law provide for inherent powers under the code, for instance, section 151 of the Code of Civil Procedure, 1908. However, there is no such provision under the RERA Act, 2016 that allows the exercise of wide or exemplary powers in any circumstance.

14. That the statutory authorities are established to act on the principles of natural justice while functioning on the powers granted to them by the legislature. A bare perusal of the RERA Act shows that the said Act allows the filing of a complaint in a specific format, as provided in the respective state rules, under section 31 of the RERA Act. For ease of reference, section 31 is reiterated hereunder:

Section 31: Filing of complaints with the Authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee, or real estate agent, as the case may be.

Explanation. For the purpose of this sub-section, "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner, and fees for filing a complaint under sub-section (1) shall be such as may be prescribed.

15. That the afore-reiterated section 31(1) of the RERA Act also categorically allows the filing of a complaint "for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder". This further strengthens the restrictive ambit of powers of the statutory authority.

16. That in the facts of the present matter, the complaint has been filed with the facts running from pages 5 through 6. Not one derivation can be derived from either of these pages, which shows any allegation of any violation of a specific provision of the RERA Act, or the rules and regulations.

17. That the Complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble

Authority. The correct facts are set out in the succeeding paras of the present reply.

18. That the Complainant, being interested in the real estate development known under the name and style of "Park Elite Premium" located at Sector-84, Faridabad, Haryana, booked a unit in the said project after conducting his due diligence. It is submitted that prior to approaching Respondent No. 2, the Allottee had conducted extensive and independent inquiries regarding the Project and it was only after the Allottee was fully satisfied with regard to all aspects of the project, that he took an independent and informed decision to purchase the unit, un-influenced in any manner by Respondent No. 2. A copy of the booking form dated 01.10.2012 is annexed as ANNEXURE R3.

19. Consequently, after the draw of lots held on 13.11.2013, a unit bearing no. G-03, tentatively admeasuring 200 sq. ft. was allotted to the Complainant vide Allotment Letter dated 16.12.2013. It is submitted that the terms of the booking form and allotment letter are binding upon the parties. A copy of the Allotment Letter dated 16.12.2013 is annexed as ANNEXURE R4.

20. It is submitted that in the absence of a stipulated timeline under the booking form and allotment letter, the possession timeline shall be ascertained as per the timeline given under the EWS Policy. It is submitted that the as per the EWS policy, the due date is calculated from

four years from the date the Allotment Letter comes out to be 16.12.2017; hence, the proposed due date of possession comes out to be 16.12.2017. It is pertinent to mention herein that the said Complainant in the complaint has also admitted that the due date of possession was 16.12.2017.

21. It is also categorical to note that the development of the project is contingent upon the occurrence of various force majeure circumstances and circumstances out of the control of the Respondents. It is submitted that the Respondent No. 2 was faced with certain force majeure events including but not limited to the 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. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made

procurement of materials difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (2) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

22. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the Respondent no. 2, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure.

23. Furthermore, it needs to be seen that the development of the Unit and the Project as a whole is largely dependent on the fulfillment of the obligation of the allottees in timely clearing their dues. The due date of the offer of possession was also dependent on the timely payment by the Complainant, which the Complainant failed to do. The demands were raised as per the agreed payment plan; however, despite the same, the Complainant had delayed the payment against the Unit.

24. That despite there being a number of defaulters in the project, Respondent No. 1 had to infuse funds into the project and has diligently developed the project in question. It was the obligation of the Complainant to make the payments as per the adopted payment plan and the agreed terms and conditions of the agreement. It is submitted that the letters of demand were raised as per the agreed payment plan; however, the Complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the Complainant from time to time. The bonafide of the Respondent No. 2 is also essential to be highlighted in this instance, who had served request letters at every stage and reminder notices in case of non-payment. Copies of the demand notices and receipt are annexed as Annexure R-5.

25. That it must be noted by the Hon'ble Authority that despite the default caused, the answering Respondent applied for an Occupation Certificate in respect of the said unit on 17.05.2017, and the same was thereafter issued vide memo bearing no. ZP-651/SD(BS)/2018/7086 dated 27.02.2018. It is pertinent to note that once an application for the grant of an Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the Respondents cease to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the statutory authority concerned, over which the

Respondents cannot exercise any influence. As far as Respondent No. 2 is concerned, it has diligently and sincerely pursued the matter with the statutory authority concerned, obtaining the Occupation Certificate. No fault or failure can be attributed to Respondent No. 2 in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant an occupation certificate to Respondent No. 2 is necessarily required to be excluded from the computation of the time period utilized for the implementation and development of the project. A copy of the Occupancy Certificate dated 27.02.2018 is annexed and marked herewith as ANNEXURE R6.

26. That even after the defaults of the Complainant, Respondent No. 2 completed the construction of the unit and offered the possession of the unit to the Complainant on 29.09.2023 and earnestly requested the Complainant to take possession of the unit after remittance of the balance sales consideration of the unit. It is submitted that out of the total sales consideration of Rs 1,58,359/- the Complainant had made a payment of only Rs 1,31,441/-. A copy of the Offer of Possession dated 29.09.2023 is annexed as ANNEXURE R7.

27. Further, it is submitted that Respondent No. 2 has been continuously requesting the Complainant to take possession of the unit, and in this regard. However, the Complainant did not pay any heed to the legitimate, just, and fair requests of Respondent No. 2. All requests of Respondent to

take possession of the Unit after making all the due payments fell on the deaf ears of the Complainant.

28.It is submitted that the Hon'ble Supreme Court noted in the case Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 that the payments are to be paid by the purchaser in a time-bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

29.That the timely payment of the sales consideration of the unit was the essence of the builder-buyer relationship between the parties. In case of default by the Complainant, the Complainant was bound to make the payment of interest at the same rate of interest as per rule 2(za) of the HRERA Rules, 2017. This obligation has also been noted in Section 19 (6) and (7) of the RERA Act, 2016.

F.ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENT

30.Ld. counsel for respondent reiterated the submissions as made in its pleadings. He argued that deemed date of possession in present case is 16.12.2017. Occupation certificate for unit in question was received 2 months after due date of possession, i.e. on 27.02.2018. He referred to relief clause 3 wherein complainant is seeking direction against

respondent to bear entire cost of cost escalation and stamp duty charges. In respect of said charges, he stated complainant has not mentioned anything in its pleadings.

31. No one appeared on behalf of complainant. At this stage, when pleadings/ proceedings of case is complete and requisite documents are on record, Authority decides to proceed with the case on merits on the basis of available documents.

G. ISSUES FOR ADJUDICATION

32. Whether the complainant is entitled to the reliefs sought in terms of Section 18 of Act of 2016? If Yes, the quantum thereof.

H.OBSERVATIONS OF THE AUTHORITY

33. Respondent no. 2 in its written reply has stated that Respondent No. 1, i.e., Countrywide Promoters Pvt Ltd. 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. 1 company has transferred its assets to the Transferee company. Thus, the Respondent No. 1 is not a separate legal entity as on date, and no legal action can be proceeded against Respondent No. 1, hence, the name of Respondent No. 1 should be deleted from the array of parties. In this regard, it is observed that the Respondent No. 1 is neither a developer nor a confirming party. Perusal of file reveals that complainant has paid all amounts and carried out transactions with respondent no. 2 only.

Further, ld. counsel for complainant clarified at the time of arguments that no relief in particular has been sought against respondent no. 1. Hence, no direction is being issued to respondent no. 1 in this final order.

34. As per facts and circumstances, complainant had booked a EWS unit in project being developed by the respondents namely 'Park Elite Premium' situated at Sector-84, Faridabad vide booking form dated 01.10.2012. Booking amount of ₹ 15,000/- was paid on 28.02.2013. Accordingly, EWS flat no. G-03, 200 sq. ft was allotted to complainant vide allotment letter dated 16.12.2013. In lieu of same, further payments to the tune of ₹ 77,782/- and ₹ 38,659/- was made by complainant on 10.02.2014 and 05.04.2014 respectively. It is the stand of complainant that possession has not been offered to him till date. Whereas respondent in its reply had annexed copy of Occupation Certificate dated 27.02.2018 and Offer of possession dated 29.09.2023 along with demand of ₹ 37,918/-. It is the contention of the respondent no. 2 that complainant is not coming forward to accept possession of unit after making payment of due amount. Feeling aggrieved, present complaint has been filed seeking possession plus delay interest along with execution of conveyance deed and other issues.

35. As per submissions of both parties, the possession of the unit would have been delivered within 4 years of allotment. Allotment letter was issued on 16.12.2013. Hence, deemed date of possession works out to 16.12.2017.

36. Respondent no. 2 has attributed this delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondents have failed to attach copies of the respective orders banning/ prohibiting the construction activities.

37. As such, 'Force majeure' is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise

of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

38. 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.*

39. 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.***

40. As such, respondents have failed to adequately prove the extent to which the construction of the project in question got affected. There is no documentary evidence on record in support of plea/claim of force majeure conditions. Hence, plea of the respondent no. 2 stands rejected.

41. Fact remains offer of possession was made by respondent no. 2 to the complainant on 29.09.2023 with demand of ₹ 37,918/- (inclusive of demand of ₹ 11,000/- for stamp duty charges). Complainant in its pleading has not stated about said offer of possession. Rather, it is mentioned in rejoinder filed by complainant in registry on 17.03.2026 that '*respondents have merely annexed a copy of the offer of possession letter to their WS without any evidence of its dispatch, delivery or receipt by complainant. This establishes that letter was drafted and retained solely in the respondent's office, never served upon the complainant-a clear stratagem to evade liability for delay interest.*'

42. Perusal of file reveals that neither complainant nor the respondent no. 2 was vigilant about their duties and obligations. There is no document/communication on record issued by complainant enquiring the status of unit from respondent no. 2 from the date of last payment (2014) to filing of this complaint. Similarly, respondent no. 2 has also not bothered to issue any reminder/communication in pursuance of offer of possession dated 29.09.2023 till today. Both parties have not placed requisite documentary evidence so the case is being decided on basis of available documents on record.

43. Respondent no. 2 had issued valid offer of possession to the complainant on 29.09.2023 with support of Occupation Certificate dated 27.02.2018. Said offer was accompanied with demand of ₹ 37,918/-. Out of said demand, complainant is disputing demand of service tax of ₹ 3941/- and GST of ₹ 2780/-. In this regard, it is observed that taxes applicable on the deemed date of

possession are payable by the allottee. Deemed date of possession in the case is 16.12.2017 and GST came into effect on 01.07.2017. Hence, GST charges are payable by complainant. Since, GST charges are payable there is no scope of charging of service tax by the complainant. Respondent no. 2 is not entitled to recover both taxes-service tax and GST. As on 16 December 2017 a builder could not charge both Service Tax and GST on the same instalment/consideration for an under-construction property. GST had replaced Service Tax with effect from 1 July 2017. Section 142(11)(b) of the CGST Act, 2017 is particularly important. It provides that GST is not payable on services "to the extent" that tax was leviable on those services under Chapter V of the Finance Act, 1994, i.e. the Service Tax law. In other words, the legislation itself prevents double taxation of the same service under the old Service Tax regime and the new GST regime.

Therefore, the levy of service tax along with GST for the same taxable event is not legal. Only the GST collection in the invoice is held to be leviable. The demand for Service Tax is held to be not leviable.

44. Complainant has not yet taken actual physical possession of unit. It can be safely concluded that respondent no. 2 had delayed the delivery of possession of unit from deemed date of possession, i.e. 16.12.2017 to the valid offer of possession i.e. 29.09.2023.

45. 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 no.2 on account of delay caused in delivery of possession for the entire period of delay. Therefore, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from 16.12.2017 to 29.09.2023.

46. 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;*

47. 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"

48. Hence, Authority directs respondent to pay delay interest to the complainants 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%).

49. Authority has got calculated the interest on total paid amount as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	date of endorsement or date of payment whichever is later	Interest Accrued till date of valid offer i.e. 29.09.2023 (in ₹)
1.	1,31,441	16.12.2017	82,218
Total:	1,31,441/-		82,218/-

50. With regard to the relief clause (i), seeking occupancy certificate and conveyance deed of the unit. It is to note that respondent has filed the copy of Occupation Certificate dated 27.02.2018 as Annexure R-6 to the reply. In respect of conveyance deed, it is observed that conveyance deed of the unit

has not been done in favor of complainant despite handing over of possession in year 2020. Respondent is obligated under section 17 of RE (R&D) Act,2016 to get the conveyance deed executed in favor of complainants after payment of necessary dues/stamp duty charges, if any, within 90 days of handing over of actual possession of unit.

51. With regard to the relief clause (iii),seeking direction against respondent to unconditionally bear for entire price escalation/revision/addition of construction of the flat and also to bear the increase on account of Stamp Duty, Tax, Fine, Penalty or any other charges increased/levied/raised by the government on the post and 16th Dec 2017 for the registration of Conveyance Deed etc. of the said flat. Authority observes that terms of allotment letter dated 16.12.2013 makes it clear that *'Stamp duty registration charges and service tax will be charges extra'*. Complainant is liable to pay for the stamp duty registration charges. Any other charges/escalation cost/amount has not been pointed out by complainant in its pleadings. So, no direction is passed against issue of *'price escalation/revision/addition of construction of the flat and Tax, Fine, Penalty or any other charges increased/levied/raised by the government on the post and 16th Dec 2017'*.

52. In respect of relief clause (iv), it is observed that the complainant is also seeking relief of litigation cost. 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

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

i. Respondent no. 2 is directed to issue fresh statement of account in terms of principles laid down in this order incorporating therein delay interest of ₹ 82,218/- to be paid to the complainant towards delay already caused in handing over the possession within 90 days from the date of uploading of this order.

ii. Respondent no. 2 is directed to execute the conveyance deed in favor of complainant within 90 days from the date of handing over of actual possession of unit.

iii. Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of execution of conveyance deed.

iv. The respondent no. 2 shall not charge anything from the complainant which is not part of the agreement to sell. Charge of service tax is held to be against the law.

54. **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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NADIM AKHTAR
[MEMBER]

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PARNEET S. SACHDEV
[CHAIRMAN]